

United States
Circuit Court of Appeals

For the Ninth Circuit. 5

WILLIAM KING WHITE, ELIZABETH
WHITE KING, ROLLIN HENRY WHITE,
JR., R. H. WHITE and KATHERINE KING
WHITE,

Appellants,

vs.

PENELAS MINING COMPANY, a Corporation,
Debtor,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the
United States for the District of Nevada.

FILED

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PAUL P. O'BRIEN,

CLERK

No. 8947

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Circuit Court of Appeals

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic: and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
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GEO. B. THATCHER, Esq.,

206 North Virginia St., Reno, Nevada,

WM. WOODBURN, Esq.,

206 North Virginia St., Reno, Nevada,

WM. J. FORMAN, Esq.,

206 North Virginia St., Reno, Nevada,

For the Interveners and Appellants.

WALTER ROWSON, Esq.,

E. C. Lyon Building, Reno, Nevada,

For the Debtor and Appellee. [1*]

In the District Court of the United States, for the
District of Nevada.

No. A-30-A

In the matter of

PENELAS MINING COMPANY,

a corporation,

Debtor.

PETITION FOR DEBTOR'S RELIEF.

Penelas Mining Company, a corporation duly organized and existing under the laws of the State of Nevada, files this its Petition as Debtor under

*Page numbering appearing at the foot of page of original certified Transcript of Record.

the provisions of Section 77B of the Act entitled "An Act to Establish a Uniform System of Bankruptcy," approved July 1st, 1898, as amended by the Act of June 7th, 1934 (11 U.S.C.A., Sec. 207), and amendments thereto, and respectfully represents:

1. That the above named Debtor was duly organized and has been and still is existing under the laws of the State of Nevada, and has been and still is duly qualified to carry on business within the State of Nevada, and during the preceding six months and more has had its principal office at Suite 319 E. C. Lyon Building, Reno, Nevada, and its principal assets in the County of Nye, Nevada; that your Petitioner is a corporation entitled to become a bankrupt and to file a petition under said Bankruptcy Act, as amended by Section 77B, approved June 7th, 1934 and amendments thereto, and that the present operations of [2] your Petitioner do not preclude it from seeking relief thereunder.

2. That Petitioner now is, and has been since the date of its incorporation, in the business of owning and operating mining claims and mining rights and the milling and reduction of mineral bearing ores in the State of Nevada, and that in addition to its aforesaid principal office has also maintained its operating office and place of busines at 540 Williams Avenue, in the City of Fallon, Churchill County, Nevada.

3. That the assets of said Debtor consist of mining claims, properties and premises described as follows:

All and singular those certain possessory quartz lode mining claims, situate in Northern Nye County, Nevada, in the vicinity of the old town of Duluth, commonly known as April Fool; Leader Extension No. 1; April Fool Annex; Beaver Extension; Beaver Annex; Comb-Bonanza; Leader Extension; Key; Link; Beaver; Patient; Victor; Combination Annex; Combination No. 1 and Home, known as the Leader Group;

Beaver No. 1; Beaver No. 2; Beaver No. 3; Combination Fraction; East View; Lynx; Margerie (or Margery) and Victor Extension (being contiguous to and forming a part of what is commonly known as the Leader Group);

New Deal No. 1; New Deal No. 2; New Deal No. 3 and Mollie;

North End; North End No. 2; North End No. 3; North End No. 4; North End No. 5; North End No. 6; North End No. 7; October and November;

Annie Marie; Golden Eagle No. 3 and Golden Eagle No. 4;

All of the aggregate book value (including development) of\$183,219.30

Together with mining and milling machinery, milling and reduction plant, equipment, tools, paraphernalia, camp buildings and furnishings, office buildings and furnishings, assay office and miscellaneous installations essential to Debtor's operations, and certain water rights and easements appurtenant to said mining claims,—

Of the aggregate book value (after allowing for depletion and depreciation) of..... 125,795.50
Real Estate 400.00

[3]

Organization expense	\$	1,077.54	
Inventories, supplies, at cost.....		6,477.12	
Cash on hand—office funds.....		7.81	
Cash on hand—expense fund (J. L. Dynan)....		14.99	
Cash on hand—deposit in bank.....		8,640.51	
Iron and Slag on hand, estimated.....		547.42	
Deposits		777.17	
Accounts receivable		406.78	
Prepaid expenses:			
Operating costs	\$967.35		
Prepaid Insurance	557.51	1,524.86	

Value of gold and silver in mill solutions and precipitates (to and including May 26th, 1938) 5,500.00

Total..... 334,389.00

4. That the liabilities of said Debtor comprise unsecured notes, accrued interest, wages due mine employees, salaries due officers, accounts payable, Federal taxes and State and County taxes, as follows:

Promissory notes executed to R. H. White and Katharine King White, respectively, in the aggregate principal sum of \$70,000.00 to each of said payees, and of which the aggregate principal sum of \$102,000.00 is now past due and unpaid, and the aggregate principal sum of \$38,000.00 will mature on or about June 1st, 1938.....	\$140,000.00
Accrued interest on said promissory notes, at 6% per annum.....	19,978.24
Accounts payable (current trade).....	850.13
" " " " (assumed from Wild Rose mine)	2,239.80
Wages payable (first half of May, payable June 5, 1938).....	2,388.98
Taxes Payable and Accrued:	
Real and personal property taxes (3rd and 4th Installments 1937).....	759.50
Nevada payroll taxes.....	226.09
Federal payroll taxes (Unemployment and Social Security due 7/31/38).....	258.07
State bullion tax (estimated, due 6/30/38)...	152.47
Federal capital stock tax (due 9/31/38).....	698.00
Officer's salary:	
R. H. White (to April 30, 1938).....	5,898.58
	Total.....\$173,449.86

[4]

5. That the total authorized capitalization of your Petitioner is One Hundred and Fifty Thousand Dollars (\$150,000.00), divided into one hundred and fifty thousand (150,000) shares of fully paid and non-assessable common stock of the par value of One Dollar (\$1.00) each per share, all of which shares are issued and outstanding.

6. That according to your Petitioner's best available information and belief, based upon examinations and reports by competent engineers heretofore employed for that purpose, there are available

in Debtor's aforescribed mineral estates, with assured particular reference to said Leader Group, ~~proven~~ 12,730 and ~~blocked out~~ ore reserves approximating ~~4,042~~ 15.00 tons of the average estimated value of ~~\$12.50~~ per 190,950.00 ton, amounting to ~~\$50,525.00~~; ~~probable ore reserves approximating 3,917 tons of the average estimated value of \$15.00 per ton, amounting to \$58,755.00;~~ and potential ore approximating 30,000 tons of the average estimated value of \$15.00 per ton, amounting to \$450,000.00, aggregating a gross tonnage 640,950.00 value of ~~\$559,280.00~~; and that the mining, extraction, milling and reduction of said available, probable and potential ore tonnages, and of other undeveloped ore bodies believed to exist in said mining premises, require careful management and a high degree of skill for the purpose of operating the same at a profit and of preserving said mineral estates as a workable mine. Your Petitioner further shows that only a small part of its mineral estates has been explored, and that the geological conditions are such that additional and extensive ore bodies may be reasonably expected to exist in said unexplored areas.

The above deletions and amendments made June 29, 1938, by stipulation of counsel.

O. E. BENHAM,
Clerk.

7. That your Petitioner is insolvent, in the sense that it is unable to meet its debts as they mature, and by reason [5] of its present embarrassed financial condition is in need of rehabilitation and desires to effect a plan of reorganization under the provisions of Section 77B of the Bankruptcy Act, as amended, and that unless relief is secured under the provisions of said Corporate Reorganization Act great loss will result, not only to your Petitioner and all of its stockholders, but to all of its creditors, in that it is impossible to liquidate and distribute your Petitioner's assets equitably among its creditors in orderly fashion except in the regular course of business, and any drastic or immediate steps of liquidation would result in great loss and confusion, not only to your Petitioner's creditors, but would totally wipe out and destroy all interests and equities of your Petitioner and of its stockholders.

8. That Petitioner, by resolution of its Board of Directors duly adopted on the 2nd day of May, 1938, authorized and empowered L. D. Gordon, its Vice-President, to make application and file this Petition on behalf of said Debtor, and that a full, true and correct copy of said resolution, duly certified by your Petitioner's Secretary under its corporate seal, is hereto attached, marked "Exhibit A," and hereby referred to.

Wherefore, for the purpose of protecting its assets and safeguarding the interests of its creditors and stockholders by effecting a reorganization on a

basis commensurate with the true and intrinsic value of the Debtor's properties under supervision of this Honorable Court, your Petitioner prays that this Petition may be approved as properly filed in good faith, and that this Court proceed in accordance with the provisions of Section 77B of the Bankruptcy Act, as amended, and that an Order may be entered permitting the Debtor to remain in temporary [6] possession of said properties and assets, or, in the alternative, for the appointment of a temporary trustee, in accordance with the provisions of said Act, for the purpose of protecting the rights of creditors and stockholders and of the Debtor herein; that during the pendency of this proceeding the Court take exclusive jurisdiction of your Petitioner and its properties wherever located; that all creditors and other persons be restrained and enjoined from instituting or prosecuting any action or proceeding at law or in equity which might hinder or interfere with the expeditious granting of the relief provided for by said Section 77B of the Bankruptcy Act, pursuant to the provisions of sub-section (c) (10) thereof, until after final decree shall have been entered **herein**.

PENELAS MINING COMPANY,
By L. D. GORDON,
As its Vice-President.

Attest:

[Seal]

WALTER ROWSON,
Secretary.

United States of America,
District of Nevada.—ss.

L. D. Gordon, being first duly sworn, on oath says:

That he is an officer, to-wit, Vice President of Penelas Mining Company, a Nevada corporation, the Debtor named in the within and foregoing Petition; that he has read said Petition and knows the contents thereof, and that the matters and things therein set forth are true of his own knowledge, information and belief.

L. D. GORDON,

Subscribed and sworn to before me this 1st day of June, 1938.

[Seal] FLORENCE TAFT,
Notary Public in and for the County of Washoe,
State of Nevada. [7]

ORDER OF APPROVAL.

The foregoing Petition of Penelas Mining Company, a corporation, is hereby approved for filing under Section 77B of the Act for the relief of corporate debtors (11 U. S. C. A., Sec. 207.)

Dated: June 1st, 1938.

FRANK H. NORCROSS,
United States District Judge. [8]

“EXHIBIT A.”

I, Walter Rowson, Secretary of Penelas Mining Company, a Nevada corporation, do hereby certify

that at a regular meeting of the Board of Directors of said corporation, duly held on Monday, the 2nd day of May, 1938, pursuant to the company's By-Laws, at which meeting a quorum of said Board was present and acting throughout, the following resolutions were duly and regularly adopted:

“Resolved, that in the judgment of the Board of Directors it is desirable and for the best interests of Penelas Mining Company, its stockholders and creditors, that a Petition for the reorganization of this corporation be filed under the provisions of Section 77B of the Federal Bankruptcy Act, as amended; and further

Resolved, that the form of Petition under said Section 77B presented to this meeting be and the same hereby is approved and adopted in all respects, and that the Vice-President or Secretary of this corporation be, and hereby are authorized and directed, for and in behalf of this corporation and in its corporate name to execute and verify a Petition substantially in such form and to cause the same to be filed with the United States District Court for the District of Nevada; and further

Resolved, that the officers of this corporation be and they hereby are authorized to execute and file all petitions, schedules, lists and other papers, and to take any and all other action, that they may deem necessary or proper in connection with said proceedings under Section 77B.”

And I hereby further certify that the Petition verified on the 1st day of June, 1938, by L. D. Gordon, Vice President of said corporation, to which Petition this certificate is annexed as Exhibit A, is in the form referred to, approved and adopted in the foregoing resolutions.

In witness whereof, I have hereunto set my hand and affixed the seal of said corporation this 1st day of June, 1938.

[Seal] WALTER ROWSON,

[Endorsed]: Filed June 1, 1938. [9]

[Title of District Court and Cause.]

ORDER APPROVING PETITION FOR DEBTOR'S RELIEF AND CONTINUING DEBTOR IN POSSESSION.

Now on this day, to-wit, the 1st day of June, 1938, this matter having been presented to the Court upon the Petition of Penelas Mining Company, a Nevada corporation, which during the precedent six months and more has had its places of business and principal assets in the District of Nevada, seeking to avail itself of the provisions of Section 77B of the Bankruptcy Act, as amended, and the Court having considered the verified Petition and having heard the statement of counsel for the Petitioner in support of the allegations therein set forth, finds that said Petition has been properly filed and complies with the provisions of Section 77B of the Bankruptcy Act, as amended; that said

Petition sets forth facts showing need for relief and has been filed in good faith, and the Court being fully advised in the premises it is therefore Ordered and decreed:

1. That the Petition of Penelas Mining Company, Debtor, [10] be and hereby is approved as properly filed in good faith and in conformity with Section 77B of the Bankruptcy Act, as amended.

2. That pending a hearing, as hereinafter mentioned, to consider the permanent continuance of the Debtor in possession, or in the alternative the appointment of a permanent trustee, said Debtor be and hereby is temporarily continued in possession of all of said Debtor's estate, including all of its properties and assets wheresoever situate, and including all rights, title and interest claimed by said Debtor in and to any and all property of whatsoever kind and nature, and with the right to said Debtor, subject to the further order of this Court, to operate the business of said Debtor.

3. That a hearing upon the question of permanently continuing said Debtor in possession, or of appointing a permanent trustee be, and the same hereby is set for hearing before the undersigned in the Courtroom of the above entitled Court, at Carson City, Nevada, at 10:00 o'clock A. M., on Wednesday, the 29th day of June, 1938.

4. That said Debtor shall give notice to all creditors and stockholders of the Debtor, of said hearing so to be held on said last mentioned day,

or any adjournment thereof, to determine whether or not this Court shall permanently continue said Debtor in possession of its said properties or shall appoint a permanent trustee herein, by mailing on or before the 14th day of June, 1938, a notice of such hearing, postage prepaid, to each of the creditors and stockholders of the Debtor appearing as such upon its books and records, and addressed to each such creditor and stockholder at his last known address appearing on said books and records, and by publishing a notice of such hearing once each week for two successive weeks in a daily [11] newspaper published and of general circulation in the City of Reno, County of Washoe, State of Nevada, the last publication to be not later than the 24th day of June, 1938.

5. That all persons, firms and corporations whatsoever, and wheresoever situated, located or domiciled, are hereby restrained and enjoined from interfering with, attaching, garnishing, levying upon and enforcing claims, demands or liens upon, or in any manner whatsoever disturbing any portion of the assets, goods, money, properties, and premises belonging to or in the possession of the Debtor, or from taking possession of or in any manner interfering with the same or any part thereof, or from interfering in any manner to prevent the discharge by the said Debtor, or of its officers or employees, of its or their duties in the operation of said property and business under the Orders of this Court, and from instituting or prosecuting any new

suits, actions or proceedings at law or in equity accruing prior to this day, in or before any Court, which might hinder or interfere with the expeditious granting of the relief provided for by Section 77B of the Bankruptcy Act, pursuant to the provisions of sub-section (c) (10) thereof, until after final decree shall have been entered herein.

6. That the Court reserves jurisdiction to make such further Order or Orders in the premises as may be consistent with or in pursuance of the provisions of Section 77B of the Bankruptcy Act, as amended.

Done in open court at Reno, Nevada, this 1st day of June, 1938.

FRANK H. NORCROSS,
United States District Judge.

[Endorsed]: Filed June 1, 1938. [12]

[Title of District Court and Cause.]

PETITION FOR LEAVE TO INTERVENE.

Come now William King White, Elizabeth White King, Rollin Henry White, Jr., R. H. White and Katherine King White, and respectfully show the Court as follows:

I.

That petitioners are the owners of seventy-five thousand (75,000) shares of the capital stock of Penelas Mining Company and were such owners at

the time of the filing of the petition herein; that said seventy-five thousand (75,000) shares constitute fifty per cent (50%) of the issued and outstanding stock of the debtor; that said shares stand of record upon the books of Penelas Mining Company as follows:

<u>Name</u>	<u>No. of Shares</u>
William King White.....	18,750
Elizabeth White King.....	18,750
Rollin Henry White, Jr.....	18,750
R. H. White.....	9,375
Katherine King White.....	9,375
Total.....	75,000

[13]

II.

That the petitioner, R. H. White, is the pledgee of an additional Thirty-seven Thousand Five Hundred (37,500) shares of the capital stock of the debtor and is in possession of the certificate or certificates therefor and has been in such possession since prior to the filing of the debtor's petition herein.

III.

That petitioners, R. H. White and Katherine King White, are creditors of the debtor and each of them holds and owns notes of the debtor in the principal sum of Seventy Thousand Dollars (\$70,000.00), or an aggregate of One Hundred and Forty Thousand Dollars (\$140,000.00), all of which is due and unpaid since June 1st, 1938; that there is accrued interest on said promissory notes past due,

according to the terms thereof, in the sum of Nineteen Thousand Nine Hundred and Seventy-eight Dollars and Twenty-four Cents (\$19,978.24).

IV.

That R. H. White is now, and ever since the organization of the debtor corporation has been, the president and a director of the debtor corporation; that there is due and owing to him, as salary, the sum of Five Thousand Eight Hundred and Ninety-eight Dollars and Fifty-eight Cents (\$5,898.50); that the petitioners, R. H. White and Katherine King White, together hold and own more than ninety-five per cent (95%) of the outstanding indebtedness of the debtor.

V.

Because of the pendency of this proceeding under Section 77B of the Bankruptcy Act, and because of the ownership of these petitioners of the stock interests in said debtor herein- [14] before set forth, and the ownership of the indebtedness of said debtor by said R. H. White and Katherine King White, matters will continually come before this Court in these proceedings which directly and materially affect the rights and interests of these petitioners; that petitioners herein, and particularly petitioners R. H. White and Katherine King White, are directly affected by the approval of the debtor's petition heretofore made by this Court, and are directly affected and interested in the securing of

an examination of Louis D. Gordon, vice-president of the debtor corporation, under the provisions of Section 21A of the Bankruptcy Act.

VI.

That the rights and interests of petitioners herein cannot adequately be protected and are likely to be lost or impaired unless petitioners are allowed to intervene herein, and

(a) be allowed to file and participate in the hearing of a petition for an order setting aside the approval of the debtor's petition herein, upon the grounds and for the reasons set forth in said proposed petition;

(b) apply for an order for and participate in an examination of Louis D. Gordon, vice-president of the debtor corporation, concerning the acts, conduct and property of the debtor corporation, under the provisions of Section 21A of the Bankruptcy Act;

(c) become the parties generally to these proceedings so that petitioners may be entitled to notice of all applications and petitions to [15] this Court and of all proceedings herein, and to be heard with respect thereto.

Wherefore, petitioners pray:

1. That they be granted leave to file herein this Petition to Intervene;

2. That petitioners be granted leave to file and participate in the hearing of the petition for orders setting aside the approval of debtor's petition;

3. That petitioners be granted leave to apply for an order for and participate in an examination of Louis D. Gordon, vice-president of the debtor corporation, concerning the acts, conduct and property of the debtor corporation, under the provisions of Section 21A of the Bankruptcy Act;

4. That petitioners be granted leave to intervene generally as parties herein for the purpose of protecting their rights as stockholders and creditors, and to file such motions, pleadings and other papers as may be necessary to protect their interests without further leave of court;

5. That due and proper notice of all applications and petitions, together with copies of all papers filed herein, be given to petitioners by service thereof upon their attorneys herein;

6. That petitioners have such other and further relief as may be lawful, and as they may hereafter apply for, and which may be just and equitable.

THATCHER & WOODBURN,
Attorneys for Petitioners. [16]

United States of America,
State of Nevada,
County of Washoe.—ss.:

Geo. B. Thatcher, being first duly sworn, deposes and says: that he is one of the Attorneys for Petitioners; that he has read the foregoing Petition for Leave to Intervene and knows the contents

thereof and that the same is true of his own knowledge, except as to matters therein alleged on information and belief and as to those matters he believes it to be true; that he makes this verification on behalf of said Petitioners for the reason that all of said Petitioners reside outside of the State of Nevada and in Cleveland, Ohio, and are not, nor are any of them within the State of Nevada at the present time.

GEO. B. THATCHER.

Subscribed and sworn to before me this 24th day of June, 1938.

[Seal] LENA STATES,
Notary Public in and for the County of Washoe,
State of Nevada.

[Endorsed]: Filed June 25, 1938. [17]

[Title of District Court and Cause.]

ORDER.

Upon consideration of the Petition for Leave to Intervene in the above entitled matter, presented by William King White, Elizabeth White King, Rollin Henry White, Jr., R. H. White and Katherine King White, and the Petition in Intervention and the consent of the debtor, by and through its attorney, Walter Rowson,

It is hereby ordered that the Petition in Intervention of said parties be filed, and that they be permitted to intervene for the following purposes:

(a) To participate in the hearing of the petition and application for an order setting aside the approval of the debtor's Petition herein, and dismissing the same;

(b) To participate in the examination of the debtor corporation and its vice president, L. D. Gordon, concerning the acts, conduct and property of the debtor corporation, under the provisions of Section 21A of the Bankruptcy Act;

(c) To become parties generally to the above entitled [18] proceedings so that petitioners may be entitled to notice of all applications and petitions to this Court, and of all proceedings herein, and to be fully heard with respect thereto.

Dated: This 27th day of June, 1938.

FRANK H. NORCROSS,

District Judge.

[Endorsed]: Filed June 27, 1938. [19]

[Title of District Court and Cause.]

PETITION IN INTERVENTION.

Come now William King White, Elizabeth White King, Rollin Henry White, Jr., R. H. White and Katherine King White, and respectfully show the court as follows:

I.

That the debtor is a corporation under the laws of the State of Nevada, with a total authorized capital stock of 150,000 shares of the par value of One Dollar (\$1.00) each. That 75,000 shares of said stock are owned and are of record upon the books of the corporation, and were so owned and on record upon the books of the corporation at the time of the filing hereof by petitioners in the following amounts:

<u>Name</u>	<u>No. of Shares</u>
William King White.....	18,750
Elizabeth White King.....	18,750
Rollin Henry White, Jr.....	18,750
R. H. White.....	9,375
Katherine King White.....	9,375
	<hr/>
Total.....	75,000

[20]

II.

That the Penelas Mining Company was organized pursuant to a certain agreement dated May 1, 1935, between L. D. Gordon of Fallon, Nevada, and Rollin Henry White (R. H. White) of Cleveland, Ohio, a full, true and correct copy of which is attached hereto, made a part hereof, and marked Exhibit "A."

III.

That R. H. White and Katherine King White are creditors of Penelas Mining Company, and each of them holds and owns notes of Penelas Mining Company in the aggregate principal sum of Seventy Thousand Dollars (\$70,000.00), or a total for the

two of One Hundred Forty Thousand Dollars (\$140,000.00), all of which is due and unpaid since June 1, 1938. That there is also past due, accrued interest on said promissory notes, according to the terms thereof, the sum of Nineteen Thousand Nine Hundred Seventy-eight Dollars and Twenty-four Cents (\$19,978.24). That there is due and owing to R. H. White from Penelas Mining Company as salary as president to April 30, 1938, the sum of Five Thousand Eight Hundred Ninety-eight Dollars and Fifty-eight Cents (\$5,898.58). That said R. H. White and Katherine King White are therefore creditors of Penelas Mining Company in the aggregate amount of One Hundred Sixty-five Thousand Eight Hundred Seventy-six Dollars and Eighty-two Cents (\$165,876.82) out of a total indebtedness shown by the Petition of the debtor at the date of the filing thereof of One Hundred Seventy-three Thousand Four Hundred Forty-nine Dollars and Eighty-six Cents (\$173,449.86) or more than ninety-five per cent (95%). That at the time of the filing of the Petition of the debtor herein, Penelas Mining Company, there was owed to other creditors, exclusive of said R. H. White and Katherine King White, but Seven Thousand [21] Five Hundred Seventy Three Dollars and Four Cents (\$7,573.04). That there was at said time ample monies to pay the same on deposit in banks, as appears from the debtor's Petition.

IV.

That the indebtedness now evidenced by promissory notes aggregating the principal sum of One Hundred Forty Thousand Dollars (\$140,000.00), as hereinbefore set forth, was loaned and advanced to Penelas Mining Company under and pursuant to said agreement dated May 1, 1935, between L. D. Gordon and Rollin Henry White (R. H. White), Exhibit "A." That said monies so loaned and advanced were used by Penelas Mining Company for the purpose of completing the terms of the agreement of lease and option from one Sawyer, Administrator of the Estate of Silverino Penelas, the acquisition of other mining property now comprising part of the assets of Penelas Mining Company, and for the purpose of building the mill on the mines of the debtor, and otherwise equipping said mines, and used in the operations of the company for the mining of ores from said mines and the treatment of ores mined and to be mined therefrom.

V.

That under and pursuant to said agreement, Exhibit "A", L. D. Gordon endorsed in blank to R. H. White and hypothecated to him 37,500 shares of the capital stock of Penelas Mining Company to be held by said White as security for the repayment to White of the amount of the corporate loans made, or caused to be made, by White which now aggregate said principal sum of One Hundred Forty Thousand Dollars (\$140,000.00). That on or about

the 7th day of June, 1938, R. H. White duly and regularly presented the certificates representing said 37,500 shares of the capital stock of Penelas Mining Company so hypothecated to him by L. D. Gordon under and pursuant to said agreement, [22] Exhibit "A", to Penelas Mining Company at its principal office, Suite 319, E. C. Lyon Building, Reno, Nevada, and then and there duly requested and demanded that said certificates evidencing said shares be transferred into the name of R. H. White as pledgee, and new certificates therefor correspondingly issued. That Penelas Mining Company and its secretary, Walter Rowson, and its vice president, L. D. Gordon, then and there refused said request and demand for the transfer of said stock certificates.

VI.

That the refusal of said corporation, and particularly its vice president and secretary, to transfer said 37,500 shares of the capital stock of Penelas Mining Company so pledged to R. H. White into the name of R. H. White as pledgee, was and is wrongful and unlawful and contrary to and in violation of said agreement, Exhibit "A", and in violation of the laws of the State of Nevada.

VII.

That said R. H. White is in law and under and by virtue of the laws of the State of Nevada vested with, and there has been transferred to him, title to said 37,500 shares of the capital stock of Penelas

Mining Company theretofore hypothecated to him by L. D. Gordon pursuant to said agreement, Exhibit "A".

VIII.

That under and by virtue of the articles of incorporation and the by-laws of Penelas Mining Company, and the laws of the State of Nevada, three directors manage and have full control over the affairs of said Penelas Mining Company. That said directors, ever since the organization of the company, have been, and now are, R. H. White, one of the petitioners here, [23] L. D. Gordon, and Walter Rowson. That said R. H. White is president of said corporation, L. D. Gordon is vice president, and Walter Rowson is secretary of said corporation. That said Walter Rowson has no interest in said corporation, and is not a stockholder or creditor thereof, and is now, and for a long time past, has been the personal attorney of L. D. Gordon.

IX.

That said Gordon and said Rowson have conspired and confederated together to retain and maintain control of the Penelas Mining Company and its assets, and to exclude the petitioners, who are the owners of fifty per cent (50%) of the capital stock of the corporation, and who have pledged to them an additional twenty-five per cent (25%) of the capital stock of said corporation with the title thereto, and who are the owners of practically

all the outstanding indebtedness of the Penelas Mining Company, from control and management of said corporation, to which they are lawfully and equitably entitled.

X.

That pursuant to such conspiracy, said Gordon and Rowson, pretending to act as officers and directors of the corporation

(a) Refused to transfer into the name of R. H. White as pledgee the 37,500 shares of stock endorsed in blank by said Gordon and hypothecated by him to said White, and held as security for the payment of the amount of the capital loans made, or caused to be made, by White; and

(b) Without notice to White, and without his knowledge or consent, and pretending to act as directors of Penelas Mining Company, on the 2nd day of May, 1938, pretended to adopt the so-called resolution authorizing the filing of the Petition for Reorganization in Bankruptcy herein. [24]

XI.

That said Petition for Reorganization presented and filed herein, is not presented and filed in good faith, but is filed solely and only for the purpose of perpetuating the control of the affairs, business and assets of said Penelas Mining Company in said Gordon and Rowson, and for the purpose of excluding the petitioners from the control thereof, to which they are equitably and lawfully entitled.

Wherefore, petitioners pray:

1. That said Petition be dismissed;

2. That if said Petition be permitted to stand, that an independent trustee be appointed, and that in such appointment the Court give weight to the recommendations of petitioners as creditors of the corporation holding practically all of its debts, and as stockholders owning and having the title to seventy-five per cent (75%) of the issued and outstanding stock of the debtor corporation;

3. For such other and further relief as may be proper and equitable in the premises.

THATCHER & WOODBURN,
Attorneys for Petitioners. [25]

United States of America,
State of Nevada,
County of Washoe.—ss.

Geo. B. Thatcher, being first duly sworn, deposes and says: That he is one of the Attorneys for Petitioners; that he has read the foregoing Petition in Intervention and knows the contents thereof, and that the same is true of his own knowledge, except as to matters therein alleged on information and belief and as to those matters he believes it to be true; that he makes this verification on behalf of said Petitioners for the reason that all of said Petitioners reside outside of the State of Nevada and in Cleveland, Ohio, and are not, nor are any

of them within the State of Nevada at the present time.

GEO. B. THATCHER.

Subscribed and sworn to before me this 24th day of June, 1938.

[Seal] LENA STATES,
Notary Public in and for the County of Washoe,
State of . [26]

EXHIBIT "A"
AGREEMENT

This Agreement, made this 1st day of May, 1935, by and between L. D. Gordon, of the Town of Fallon, County of Churchill, State of Nevada, First Party, and Rollin H. White of the City of Cleveland, State of Ohio, Second Party,

Witnesseth:

Recitals:

1. Heretofore on March 13th, 1931, First Party acquired an agreement of lease and option from one H. W. Sawyer, administrator of the estate of Silverino Penelas, deceased, upon certain mining properties and premises situate near the old town of Duluth, in Northern Nye County, Nevada, and particularly described as follows:

All and singular those certain quartz lode mining claims, commonly known and described as April Fool, Leader Extension No. 1, April

Fool Annex, Beaver Extension, Beaver Annex, Combination-Bonanza, Leader Extension, Key, Link, Beaver, Patient, Victor, Combination Annex, Combination No. 1 and Home, known as the Leader Group.

Said agreement of lease and option has been recurrently modified and extended from time to time, and in that behalf First Party expressly represents that he has fully complied with all of the terms, covenants and conditions recited and set forth in said agreement, and in the several modifications and extensions thereof which have been from time to time granted to First Party by the administrator of said estate, and that the same is now in full force and effect.

2. In addition to said aforementioned mining claims, and by reason of a realignment thereof under a recent mine survey and a final adjustment of property rights with certain alleged junior locators, a number of additional mining claims or locations have been acquired by said administrator of said estate which form an [27] integral part of said Leader Group, and are to be included in the property covered by said agreement of lease and option without any further payment than the consideration therein specified as the purchase price of said Leader Group. It is contemplated in that connection that the administrator of said estate will procure an appropriate order of court authorizing the inclusion in said lease and option of all of said

additional mining claims or locations, described as follows:

Beaver No. 1, Beaver No. 2, Beaver No. 3, Combination Fraction, East View, Lynx, Margery and Victor Extension.

3. Pursuant to said agreement, as so modified, the parties hereto have expended large sums of money and devoted extensive time and effort to the development of said mining premises and the installation of mining machinery, buildings, equipment and paraphernalia thereon to a point where it is deemed advisable to erect a milling plant thereon for the treatment and reduction of the mineral bearing ores, rock and earth uncovered in said properties, and to that end to join in the incorporation of a company to acquire and take over all of the said mining properties and improvements under certain particular terms and conditions hereinafter set forth.

Now, therefore, for and in consideration of the sum of Ten Dollars (\$10.00), lawful money of the United States, passing between the parties, receipt whereof from one to the other is hereby mutually confessed and acknowledged, and in further consideration of the mutual promises and agreements hereinafter reserved and by each of the parties to be kept and performed, it is agreed between the parties as follows:

1. Said proposed corporation shall be organized under the laws of the State of Nevada, and shall

be known as Penelas Mining Company, with an authorized capitalization of One Hundred and [28] Fifty Thousand Dollars (\$150,000.00), divided into one hundred and fifty thousand (150,000) shares of the par value of One Dollar (\$1.00) each per share of fully paid and non-assessable capital stock. Said authorized capitalization shall be divided equally as between the parties hereto, provided the parties shall thereupon deliver three thousand seven hundred and fifty (3,750) shares of their said stock holdings to the administrator of the estate of Silverino Penelas, deceased, conformable to the terms of said agreement of lease and option, unless said agreement is hereafter so modified as to require the payment of Five Thousand Dollars (\$5,000.00) additional cash in lieu of said stock consideration. For the purpose of creating a corporate treasury, each of the parties shall, as occasion may require, donate to the corporation equal amounts of their said stock holdings, not exceeding seventy-five thousand (75,000) shares in the aggregate, conditioned that the stock so donated shall be used exclusively for corporate financing or as bonus stock for moneys heretofore or hereafter advanced by the parties in furtherance of said mining project.

2. The principal office and place of business of said proposed corporation shall be at Rooms 223-225 E. C. Lyon Building, Reno, Nevada, and the Resident Agent in charge of said office shall be by Walter Rowson. Said proposed corporation shall have a directorate of not less than three (3) nor

more than seven (7) directors, and the personnel of the directors and officers shall in the first instance be constituted as follows:

President and Director.....	R. H. White
Vice President, Director and	
Treasurer	L. D. Gordon
Secretary and Director.....	Walter Rowson

3. First Party shall be appointed as Manager of said corporation, commencing as of August 1st, 1935, and thereafter at the pleasure of the board, and shall receive the same salary of Eight Hundred Dollars (\$800.00) per month heretofore paid him for like services by the precedent mining partnership of Gordon and White; and commencing as of August 1st, 1935, and thereafter at the [29] pleasure of the board, Second Party shall receive as President of said corporation the same salary of Two Hundred and Fifty Dollars (\$250.00) per month heretofore paid him by said mining partnership of Gordon and White.

4. For the purpose of prosecuting said mining and milling enterprise, and in addition to the sum of Ten Thousand Dollars (\$10,000.00) which has been already advanced by Second Party in behalf of said corporate project during the pendency of negotiations between the parties, Second Party hereby agrees to loan to said proposed corporation, Penelas Mining Company, the further and additional sum of Forty Thousand Dollars (\$40,000.00), which said amount shall be used primarily in the installation of an adequate milling plant on said

mining premises, and in the further development of the same as a workable mine.

5. All of the moneys so to be advanced by Second Party to the corporate treasury of said proposed Penelas Mining Company, shall be furnished from time to time as needed, upon budget estimates to be prepared by First Party in his capacity as Manager of said proposed corporation, and telegraphed to Second Party not less than ten (10) days prior to the first day of the next ensuing month during which such budgeted funds are required, and it is expressly agreed that the amount of any such budget or budgets shall not in any event exceed the sum of Twenty Thousand Dollars (\$20,000.00) during any one month.

6. All of the moneys so to be advanced, and heretofore advanced by Second Party, aggregating Fifty Thousand Dollars (\$50,000.00) in all, shall be evidenced by promissory notes to be executed and delivered to Second Party by said proposed Penelas Mining Company, which said notes shall bear interest at six per cent (6%) per annum and shall mature in two and one-half (2½) years from and after the respective dates upon which such advances [30] may be made. As to all of the moneys so advanced and to be advanced to said proposed corporate treasury by Second Party, treasury stock of said proposed Penelas Mining Company shall be issued in equal amounts to each of the parties on the basis of one (1) share of such treasury stock for each dollar so advanced by Second Party; pro-

vided, however, that all of the treasury shares so to be issued to First Party shall be endorsed in blank by said First Party and hypothecated to and held by said Second Party as security for the repayment to Second Party of the amount of said corporate loans. First Party's said treasury stock shall be ratably released and surrendered to First Party at such time or times, and in such amounts, as Second Party shall be reimbursed for said advances, (and whether the same be made from the corporate treasury or by First Party), upon the basis of one (1) share of treasury stock for every four dollars of corporate loans so repaid to Second Party, until such time as the entire amount of said advances and accrued interest shall have been repaid in full to Second Party, whereupon all of said hypothecated stock remaining in the hands of Second Party shall be immediately released and surrendered to First Party.

7. No dividends shall be declared or paid upon any of the issued and outstanding stock of said proposed corporation until the entire amount of all moneys theretofore advanced by Second Party to said corporate treasury, together with accrued interest, inclusive of the sum of \$10,000.00 heretofore advanced by Second Party in behalf of said corporate project as aforesaid, shall have been repaid in full to Second Party.

8. In the event that the aggregate sum of \$50,000.00 so advanced and to be advanced by Second Party shall be insufficient to accomplish the pro-

posed corporate project of placing said mining property on a productive basis at an operating profit, Second [31] Party shall have the prior right, at his sole option, to make further advances not exceeding the sum of Twenty-five Thousand Dollars (\$25,000.00), and in that event the balance of twenty-five thousand (25,000) shares then remaining in the corporate treasury of said proposed Penelas Mining Company shall be likewise issued in equal amounts to First and Second parties hereto, upon the basis of one (1) share of treasury stock for each dollar so advanced by Second Party; provided, however, that as to all such additional treasury stock so issued to First Party, the same requirements and conditions as to the hypothecation of said stock to Second Party, and as to its subsequent release to First Party, (as recited in Paragraph 6 hereof), shall be applicable before such additional treasury stock shall be delivered to First Party.

9. Second Party shall have the prior right, at his sole option, to advance such further and additional funds to said proposed corporation as may be requisite and necessary for the purpose of liquidating the balance of the purchase price now or at any time hereafter remaining unpaid on the purchase price of said Leader Group, so as to vest legal title to said property in the proposed corporation, and in such event Second Party shall be thereupon entitled to and receive from said proposed Penelas Mining Company a first mortgage upon all

of its said mining claims so to be acquired, as and for a corporate lien security for all of the moneys theretofore advanced by Second Party.

10. Any and all advances made by Second Party prior to the execution of these presents and the perfection of said proposed corporate organization, shall be deemed to have been made jointly by First and Second Parties, and as to one-half of all such amounts First Party shall execute and deliver his personal promissory note or notes to Second Party, which said note or notes shall be surrendered to First Party by Second Party at such time [32] as said proposed corporate organization shall have been duly perfected and promissory note or notes of said corporation in like amount shall have been issued and delivered to Second Party in lieu thereof.

11. This agreement, and each and every clause and covenant thereof shall extend to and be binding upon, the heirs, executors, administrators and assigns of the parties hereto.

In Witness Whereof, the parties hereto have hereunto signed their names the day and year in this agreement first above written.

L. D. GORDON,

First Party.

ROLLIN H. WHITE,

Second Party.

[Endorsed]: Filed June 27, 1938. [33]

[Title of Cause.]

OPINION OF COURT

The Court would like to have had a written opinion in the case and reserves the right so to do. Some matters that have been presented are not as clear to the Court as the Court would like them.

I have heretofore indicated this is a matter in which, if there are any defects in the matter of the Petition, so far as the meeting and action of the Board of Directors, can even now be corrected and ratified. I am impressed, however, that in the condition in which this property now is, and in view of the fact there are but two parties who have an ultimate interest therein, that this is a procedure which apparently would afford a solution.

I will sustain the Petition and grant the Petition, but under the conditions that the property be placed in the hands of a Board of three trustees. These trustees will be Mr. White, Mr. Gordon and Mr. Schrader.

As I understand the law, the question of compensation of trustees is entirely a matter within the Court. It may develop that certain trustees will perform more services than others. Those are all matters that can be considered. The Court, under the statute, has power, if it should develop that the trustees, for any reason it may be shown to the Court, are not handling the interests of the company in the best way, that is a matter [34] that the Court has power, under the statute, on good cause shown, to change the directorate.

I am not, at this time, going to put any restrictions on the Board of Trustees. I will leave it to them to get together for the purpose of carrying out the real purpose of the corporation. As I before indicated, there are two parties that have an interest in the mining property. This property has been, to some extent, developed. So far as we have had any information from mining engineers, there are possibilities of further development, which we hope may pay Mr. White in full and that the stock will be valuable to those who are the owners thereof.

Some reference was made to expressions made in the opinion that the Court handed down in the Coppermines case. I refer to one matter in that case, that in dealing in mining properties it was the view of the Court the Golden Rule had quite a bearing, and I think in this matter now, in dealing and working out of this property, if there is a mine there it will pay out and I am hopeful that it will develop so that not only Mr. White may be paid in full, but that the stock of both Mr. White and Mr. Gordon may be of real value. Those who advance money for the development of a mining property are always entitled to highest consideration by those who are operating the property. The best of mining men make mistakes, whether they are furnishing the capital or the engineers in charge. Sometimes disappointments are met where one has hoped for the richest of ore. Sometimes mines are found that are a surprise to every one in the development of rich ore. The Court hopes for the best in this property.

The only suggestion I am going to make to the trustees is that the fundamental proposition to be carried out is the economical development of this property, with a view of payment [35] to Mr. White in full of the money which he has advanced for development and to Mr. Gordon for his time and labor and devotion to the development of the property, and in those conferences I do not know of anything better to offer, in mining particularly, where interests both of those who advance the money for development and those who are interested otherwise in the property are concerned, the Golden Rule will help out.

With best wishes for the success of the administration, that will be the order of the Court at this time. The Petition is approved and the matter is referred to the three trustees named.

Mr. Higgins: If the Court please, speaking for Mr. White, he has a great many interests in various parts of the country. He lives in Cleveland. Mr. Thatcher lives here, has had knowledge and experience in dealing with mining matters. I request that the Court enter the order which the Court has made, substituting Mr. Thatcher for Mr. White as one of the trustees, as facilitating the workings of the meetings of the trustees, because Mr. Thatcher will be here and it will be impossible for Mr. White to serve as assiduously as Mr. Thatcher could.

Mr. Rowson: If your Honor, please, we have no objection to that substitution, if Mr. Gordon is left in active charge as operating trustee, Mr. Schrader,

as I say, as consulting engineer, whose ideas on the development and operation of the property shall be final; that is, to the extent Mr. Gordon shall refer to it; we have no objection if that substitution is made, but as Mr. Thatcher is attorney for the intervener, ordinarily, if it were not a man of General Thatcher's type—I have the highest regard in the world for General Thatcher, both as a lawyer and a man and as my personal friend—I would not be disposed to accept such a substitution of that kind, but I do believe if General Thatcher is [36] acting on that Board and serves as a member——

Mr. Thatcher: I will abide by the order of the Court.

The Court: As I stated in the beginning, I had no idea Mr. Thatcher was going to be suggested, but I made the statement I was in hopes that the two parties in interest would retain the position, but if for any reason they do not wish to do that, would have the right to suggest some one in their stead. If that is the desire, I appoint Mr. Thatcher. I will state, as I have stated heretofore, that the Court reserves the right, at any time, to make any modifications which the statute gives the Court in the matter of trustees and remove the entire Board and appoint some one to suit the Court if necessary, but until these parties, the trustees get together—if they reach a point that they can't solve—Mr. Schrader is an engineer and what action he may take the Court has not been advised—I make no restrictions at this time.

Mr. Rowson: I do not wish any restrictions, your Honor, at all. Your Honor formerly stated that it was your Honor's idea that Mr. Gordon would be left in charge of operations; that is, as operating trustee. Now your Honor has not included that in the formal order.

The Court: At this time I see no reason to make any change in the order.

Mr. Rowson: Will that be made part of the formal order?

The Court: No, I stated I would make no restrictions whatever at this time. If there is any reason for so doing later, on a showing, the Court will consider that matter. The less restrictions the Court puts in advance on trustees, in my experience, the better. Sometimes something develops that makes it incumbent upon the Court to change that point of view. [37]

Mr. Rowson: Are we correct in assuming then, on that statement, that the men who are in active charge of operations will remain in their present positions for the time being?

The Court: The matter is now in the hands of three trustees.

Mr. Rowson: Remain in status quo until changed by the trustees, is that correct? Until such time, your Honor, as the trustees may order otherwise, the men in active charge will remain in their present positions?

The Court: Well, the matter has been in the hands of the corporation. It is now in the hands of

the Board of Trustees. It is up to the Board to make any changes they see fit. Until those are made, I suggest they will continue.

Mr. Rowson: Now the question of attorney for the trustees. Inasmuch as Mr. Thatcher is appointed as a trustee in substitution of Mr. White, I take it General Thatcher would not act as attorney for the trustees.

Mr. Thatcher: Certainly not.

Mr. Rowson: In my position as attorney for the debtor, I would not be available and I suppose the trustees will later determine——

Mr. Thatcher: I don't know any reason for appointing an attorney at the present time.

The Court: I have one corporation now—I will state that the Court is operating the V. & T. Railway with three receivers and up to date no attorneys have been appointed for the receivers.

Mr. Rowson: I want that clearly developed, of course, that General Thatcher's position is that of a trustee.

The Court: That naturally follows. [38]

MINUTES OF COURT,

July 9, 1938.

[Title of District Court and Cause.]

The further hearing herein coming on regularly this day, the same counsel, parties and reporter being present. Mr. Rowson resumes closing argu-

ment, following which the matter is submitted, subject to the right of debtor to file points and authorities or brief. At 11:40 o'clock A. M. a recess is declared and counsel and the court discuss the matter of appointment of trustees if the Court should determine that trustees be appointed. Case reconvened. The Court: "Ordered debtor's petition sustained and granted, but under the conditions that the property be placed in the hands of a board of three trustees, those trustees will be Messrs. R. H. White, L. D. Gordon and E. J. Schrader. The petition is approved and the matter referred to the three trustees now." Mr. Higgins requests the Court to substitute Mr. George B. Thatcher for Mr. White as a trustee. Mr. Rowson replies and states he has no objection to this change if Mr. Gordon be allowed to remain as operating trustee. Thereupon, It Is Ordered that Geo. B. Thatcher be, and he hereby is, appointed as trustee in lieu of R. H. White. [39]

[Title of District Court and Cause.]

ORDER

There coming on for hearing before this Court, on the 29th day of June, 1938, in the above entitled matter, the Petition in Intervention of William King White, Elizabeth White King, Rollin Henry White, Jr., R. H. White and Katherine King White, praying that the Petition of the debtor herein be dismissed, and further praying that if said Petition

be permitted to stand that an independent Trustee be appointed; and

There coming on for hearing at the same time before this Court a hearing to determine the question of permanently continuing the debtor in possession of its property and assets, with the power to operate its business subject to the order of the Court or of appointing a permanent Trustee herein for said purposes; and

It Appearing to the Court that Notice of this hearing has been given by mailing on or before the 14th day of June, 1938, a Notice of such hearing, postage prepaid, to each of the creditors and stockholders of the debtor appearing as such upon its books [40] and records and addressed to such creditor and stockholder at his last known address appearing on said books and records, and by publishing a Notice of such hearing once a week for two successive weeks in the Reno Evening Gazette, a newspaper published and of general circulation in the City of Reno, County of Washoe, State of Nevada, the last publication thereof being not later than the 24th day of June, 1938, and evidence being submitted to the Court upon the Petition of Interveners and upon the hearing of the question of permanently continuing said debtor in possession of its property and assets, or of appointing a permanent Trustee herein for said purpose, and the arguments of counsel for said debtor and said Interveners having been heard and considered and the Court being fully advised in the premises, It Is Hereby Ordered

(1) That the Petition of Interveners herein that the Petition of the Debtor herein be dismissed, is hereby denied.

(2) That L. D. Gordon, Geo. B. Thatcher and E. J. Schrader be, and they hereby are, appointed Trustees of and for the debtor and of the debtor's estate, including all and singular the properties, assets and business of every nature and kind and wheresoever situated, held, owned or controlled by the debtor, including, without however limiting the generality of the foregoing, all lands, buildings and appurtenances, all equipment, furniture, supplies, merchandise, books of account, records and other books, papers and documents, cash on hand and in banks or on deposit, choses in action, credits, stocks, bonds, securities, leases, contracts, muniments of title, bills and accounts receivable, and all profits and income accrued or to accrue from said assets and business, specifically including all of the foregoing described assets and business [41] which are now in the possession or under the control of the debtor.

(3) That said Trustees are hereby vested with full power and authority to and hereby are instructed to take all of said properties, assets and business into their exclusive possession and control, and hereby are vested with all the powers of trustees as provided by Section 77B of the Bankruptcy Act, and with all the general powers not inconsistent with said Section 77B of a receiver in equity, and subject to the control of the Judge of this Court

shall have the power to operate the business of the debtor until the further order of this Court, and said Trustees shall have such further and additional powers, or shall be so limited in their powers, as the Court, pursuant to the reservations herein contained, shall order.

(4) Nothing herein contained shall be construed as a direction to said Trustees to ratify or take over any existing contracts of the debtor, which in the judgment of said Trustees should be disaffirmed, and the Trustees are hereby authorized to employ, discharge and pay salaries, wages, expenses and compensation of such employees, bookkeepers and agents, and such other employees as they may deem necessary in connection with the administration, preservation, maintenance and operation of said properties and business; to pay any claims for wages or other debts entitled to priority of payment under the provisions of the Bankruptcy Act; to pay any and all outstanding obligations, including the salaries, wages, compensation and actual travelling expenses of employees and servants of the debtor if such are unpaid which have been incurred by debtor in the operation of the business since the approval of the petition herein, including any indebtedness for services and travelling expenses rendered pursuant to the sanction of this Court since the first day of June, 1938. [42]

(5) The debtor, its officers, directors, agents, employees, servants or other representatives, are hereby ordered and directed to deliver into the possession and control of said Trustees all of the above de-

scribed properties, assets and business of the debtor now in its possession or control, and said debtor, and each and every of its said officers, directors, agents, employees or other representatives are hereby severally restrained and enjoined from in any wise interfering with or disturbing the Trustees in their exclusive use, possession and enjoyment of any of said properties, assets and business, and selling, assigning, secreting, transferring, encumbering or otherwise disposing of or dealing with any of said properties, assets and business.

(6) The debtor shall close its present books of account as of the 15th day of July, 1938, and the Trustees shall open new books of account as of the opening of business on the 16th day of July, 1938, all operations beginning with the opening of business on said date being deemed to be for the account of the Trustees. In said books the Trustees shall cause to be kept due and proper accounts of earnings, expenses, receipts and disbursements, and shall preserve proper vouchers for all payments, and shall deposit the monies coming into their hands in such banks in which the funds of the debtor are presently deposited, or in such other bank or banks as they may select. Nothing in this paragraph contained shall be construed to mean that the Trustees shall not pay as hereinbefore provided any and all outstanding obligations which have been incurred by the debtor in the continuance and operation of the business since the approval of the petition herein.

(7) The Trustees shall retain possession and control of [43] the aforesaid properties, assets and business and continue to discharge the powers and duties aforesaid until the further order of the Court. The Court hereby reserves full right and jurisdiction from time to time to enter such further orders and decrees amplifying, extending, limiting or otherwise modifying this Order as to it may seem essential or necessary to regulate and control the conduct of the Trustees and the administration of the estate.

(8) The Trustees are hereby authorized from time to time to apply to this Court for such other and further directions and instructions as they may deem necessary or advisable in the due performance of their duties hereunder, and the right is reserved to all persons who may become parties hereto to apply to this Court for any other or further directions and instructions to the Trustees.

(9) The Trustees shall on or before the 1st day of September, 1938, unless such time be extended, file schedules containing a summary statement of the assets of the debtor turned over to them as Trustees, and a summary statement of the liabilities of the debtor as disclosed by the books and records and the proofs of claim that may be filed herein, which said schedules shall be in lieu of the schedules required by Section 7 of the Bankruptcy Act. The Trustees shall also file each two months commencing August 12, 1938, a report of their operations, and in addition submit such other information as they may deem helpful or as the Court may from

time to time request, to disclose the conduct of the debtor's affairs and the fairness of any reorganization plan that may be proposed.

(10) The Trustees shall severally qualify upon executing and filing with the Clerk of this Court a bond in favor of the [44] United States of America in the sum of Five Thousand Dollars (\$5,000.00), to be approved by this Court, conditioned that they will well and truly perform the duties of their office and duly and faithfully account for all monies and properties whatsoever which may come into their custody and control.

Dated: This 13th day of July, 1938.

FRANK H. NORCROSS,
District Judge.

[Endorsed]: Filed July 13, 1938. [45]

[Title of District Court and Cause.]

NOTICE OF LODGMENT OF STATEMENT OF
EVIDENCE AND FIXING TIME FOR
APPROVAL THEREOF

To the Above Named Debtor, and to Walter Rowson,
Its Attorney:

You and Each of You Will Please Take Notice that the Interveners and Appellants in the above entitled matter have prepared a Statement of Evidence under Equity Rule 75 for use in connection with their appeal from the Order of the United

States District Court for the District of Nevada made by Hon. Frank H. Norcross, Judge thereof, on the 13th day of July, 1938, denying the petition of Interveners and Appellants for dismissal of the Debtor's Petition of Penelas Mining Company under Section 77B of the Bankruptcy Act, and appointing Trustees of the Debtor corporation, which said Statement of Evidence has been lodged in the office of the Clerk of the above entitled Court for your examination.

Please Take Further Notice that Interveners and Appellants will ask the above entitled Court to approve said Statement of [46] Evidence on Wednesday the 26th day of October, A. D. 1938, at 10 o'clock A. M. of said day, or as soon thereafter as counsel can be heard, at the courtroom of the above entitled Court in the Federal Building in the City of Carson, State of Nevada.

Dated: This 15th day of October, 1938.

GEO. B. THATCHER,

WM. WOODBURN,

WM. J. FORMAN,

Attorneys for Interveners
and Appellants.

[Endorsed]: Filed Oct. 18, 1938. [47]

[Title of District Court and Cause.]

NOTICE OF MOTION

To Penelas Mining Company, Debtor Above Named,
and to Walter Rowson, Its Attorney:

You and Each of You Will Please Take Notice That on Wednesday the 26th day of October, A. D. 1938, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, at the courtroom of the above entitled Court in the Federal Building in Carson City, Nevada, Interveners and Appellants herein will move the above entitled Court for an order directing that the following testimony of the following witnesses:

Mr. Gordon, beginning Tr. page 44, line 11, to and including page 47, line 13; beginning Tr. page 92, line 28, to and including Tr. page 94, line 13; and beginning Tr. page 154, line 16, to and including Tr. page 155, line 17.

Mr. Rowson, beginning Tr. page 96, line 27, to and including Tr. page 113, line 15.

Mr. James, beginning Tr. page 132, line 10, to and [48] including Tr. page 149, line 2; beginning Tr. page 200, line 4, to and including page 212, line 3; beginning Tr. page 214, line 12, to the words "Mr. Thatcher: That is all", page 227; and beginning Tr. page 274, line 1 to page 276, line 11.

Mr. Schrader's entire testimony;

shall be reproduced in the exact words of the witness in the Statement of Evidence filed in connec-

tion with the appeal heretofore allowed in the above entitled cause for the reason that the meaning of said testimony cannot be readily understood unless reproduced in the exact words of the witness.

Dated: This 15th day of October, A. D. 1938.

GEO. B. THATCHER,

WM. WOODBURN,

WM. J. FORMAN,

Attorneys for Interveners
and Appellants.

[Endorsed]: Filed Oct. 18, 1938. [49]

[Title of District Court and Cause.]

MOTION

Comes Now Interveners and Appellants and move the Court to direct that the following testimony of the following witnesses:

Mr. Gordon, beginning Tr. page 44, line 11, to and including page 47, line 13; beginning Tr. page 92, line 28, to and including Tr. page 94, line 13; and beginning Tr. page 154, line 16, to and including Tr. page 155, line 17.

Mr. Rowson, beginning Tr. page 96, line 27, to and including Tr. page 113, line 15.

Mr. James, beginning Tr. page 132, line 10, to and including Tr. page 149, line 2; beginning Tr. page 200, line 4, to and including Tr. page 212, line 3; beginning Tr. page 214, line 12, to

the words "Mr. Thatcher: That is all", Tr. page 227; and beginning Tr. page 274, line 1 to page 276, line 11.

Mr. Schrader's entire testimony;

be reproduced in the exact words of the witness in the Statement [50] of Evidence filed in connection with the appeal heretofore allowed in the above entitled cause for the reason that the meaning of said testimony cannot be readily understood unless reproduced in the exact words of the witness.

Dated: This 15th day of October, A. D. 1938.

GEO. B. THATCHER,

WM. WOODBURN,

WM. J. FORMAN,

Attorneys for Interveners
and Appellants.

[Endorsed]: Filed Oct. 18, 1938. [51]

[Title of District Court and Cause.]

ORDER

On motion of Geo. B. Thatcher, Wm. Woodburn and Wm. J. Forman, attorneys for Interveners and Appellants in the above entitled cause, and in view of the nature and character of the testimony,

It Is Hereby Ordered that in making up the record on appeal that the following testimony of the following witnesses:

Mr. Gordon, beginning Tr. page 44, line 11, to and including page 47, line 13; beginning Tr.

page 92, line 28, to and including Tr. page 94, line 13; and beginning Tr. page 154, line 16, to and including Tr. page 155, line 17.

Mr. Rowson, beginning Tr. page 96, line 27, to and including Tr. page 113, line 15.

Mr. James, beginning Tr. page 132, line 10, to and including Tr. page 149, line 2; beginning Tr. page 200, line 4, to and including Tr. page 212, line 3; beginning Tr. page 214, line 12, to the words "Mr. [52] Thatcher: That is all", Tr. page 227; and beginning Tr. page 274, line 1 to page 276, line 11.

Mr. Schrader's entire testimony;

be reproduced in the exact words of the witness in the form of questions and answers.

Dated: This 26th day of November, A. D. 1938.

FRANK H. NORCROSS,

District Judge.

[Endorsed]: Filed Nov. 26, 1938. [53]

[Title of District Court and Cause.]

NOTICE OF MOTION

To Penelas Mining Company, Debtor Above Named,
and to Walter Rowson, Its Attorney:

You and Each of You Will Please Take Notice that on Wednesday the 26th day of October, A. D. 1938, at the hour of 10 o'clock A. M., or as soon thereafter as counsel can be heard, at the courtroom

of the above entitled Court in the Federal Building in Carson City, Nevada, Interveners and Appellants herein will move the above entitled Court for an order directing that the following Exhibits, to-wit: Debtor's Exhibits Nos. 1, 16, 17 and 18, referred to and described in the Statement of Evidence filed herein, be transmitted by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, and returned after the disposition of the appeal to the Clerk of this Court. Said motion will be made upon the ground and for the reason that it is necessary and proper that the original Exhibits hereinbefore mentioned be sent to the said Circuit Court of Appeals for the [54] Ninth Circuit for its inspection on the appeal heretofore taken herein by Interveners and Appellants.

Dated: This 15th day of October, A. D. 1938.

GEO. B. THATCHER,

WM. WOODBURN,

WM. J. FORMAN,

Attorneys for Interveners
and Appellants.

[Endorsed]: Filed Oct. 18, 1938. [55]

[Title of District Court and Cause.]

MOTION

Comes Now Interveners and Appellants and move the above entitled Court for an order that the fol-

lowing Exhibits, to-wit: Debtor's Exhibits Nos. 1, 16, 17 and 18 referred to and described in the Statement of Evidence filed herein be transmitted by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, and returned after the disposition of the appeal to the Clerk of this Court. Said motion is made upon the ground and for the reason that it is necessary and proper that the original Exhibits hereinbefore mentioned be sent to the said Circuit Court of Appeals for the Ninth Circuit for its inspection on the appeal heretofore taken herein by Interveners and Appellants.

Dated: This 15th day of October, A. D. 1938.

GEO. B. THATCHER,

WM. WOODBURN,

WM. J. FORMAN,

Attorneys for Interveners
and Appellants.

[Endorsed]: Filed Oct. 18, 1938. [56]

[Title of District Court and Cause.]

ORDER

Upon motion of Geo. B. Thatcher, Wm. Woodburn and Wm. J. Forman, attorneys for Interveners and Appellants in the above entitled matter, and

It Appearing to the Court that in this cause it is necessary and proper in the opinion of the Court that Debtor's Exhibits Nos. 1, 16, 17 and 18 be in-

spected in the United States Circuit Court of Appeals for the Ninth Circuit upon the appeal heretofore taken by Interveners and Appellants herein;

Now, Therefore, It Is Hereby Ordered that Debtor's Exhibits Nos. 1, 16, 17 and 18, referred to and described in the Statement of Evidence filed herein, be transmitted by the Clerk of this Court to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit at San Francisco, California, and returned after the disposition of the appeal heretofore taken by Interveners and Appellants herein to the Clerk of this Court.

Dated: This 26th day of November, A. D. 1938.

FRANK H. NORCROSS,
United States District Judge.

[Endorsed]: Filed Nov. 26, 1938 [57]

[Title of District Court and Cause.]

AFFIDAVIT

State of Nevada,
County of Washoe—ss.

William Woodburn, Jr., being first duly sworn, deposes and says: That he is a citizen of the United States and a resident of the County of Washoe, State of Nevada, over the age of twenty-one years and not a party to the above entitled action; that on the 15th day of October, 1938, the said William Woodburn, Jr. served upon Walter Rowson a copy of the following documents:

1. Statement of Evidence and of Notice of Settlement;
2. Notice of Lodgment of Statement of Evidence and Fixing Time for Approval Thereof;
3. Notice of Motion that the testimony of certain witnesses be reproduced in the exact words of the witness in the Statement of Evidence;
4. Motion based upon the foregoing Notice;
5. Notice of Motion for order directing original Exhibits [58] to be transmitted to the Circuit Court of Appeals;
6. Motion for order directing original Exhibits to be transmitted to the Circuit Court of Appeals;

by leaving such documents in the office of Walter Rowson in the E. C. Lyon Building, Reno, Nevada, with Margaret Harrington, the clerk of said Walter Rowson and the person then and there having charge of said office.

Dated: This 15th day of October, 1938.

WILLIAM WOODBURN, JR.

Subscribed and sworn to before me this 15th day of October, 1938.

[Seal] A. COATES,

Notary Public in and for the County of Washoe,
State of Nevada.

[Endorsed]: Filed Oct. 18, 1938. [59]

[Title of District Court and Cause.]

PRAECIPE

To the Clerk of the Above Entitled Court:

You Are Hereby Requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause and to include in such transcript of record the following papers and documents, to-wit:

1. Petition for Debtor's Relief, filed June 1st, 1938;
2. Order approving Petition for Debtor's Relief and continuing Debtor in possession, filed June 1st, 1938;
3. Petition for Leave to Intervene, filed June 25th, 1938;
4. Order allowing intervention, filed June 27th, 1938;
5. Petition in Intervention, filed June 27th, 1938;
6. Petition for an Order Allowing Appeal; [60]
7. Assignment of Errors;
8. Citation on Appeal;
9. Statement of Evidence heretofore lodged, when settled by order of Court;
10. Notice of Lodgment of Statement of Evidence and Fixing Time for Approval Thereof;
11. Notice of Motion that the testimony of certain witnesses be reproduced in the exact

words of the witness in the Statement of Evidence;

12. Motion based upon the foregoing Notice;
13. Any Order that the Court may make upon the foregoing Motion;
14. Notice of Motion for Order directing original Exhibits to be transmitted to the Circuit Court of Appeals for the Ninth Circuit;
15. Motion for Order directing transmission of such Exhibits;
16. Any order of Court that may be made on the foregoing Motion;
17. Affidavit of William Woodburn, Jr. of service of Notices and Motions;

July

18. Opinion of the Court delivered orally ~~June~~ 9th, 1938, and transcribed and filed in the above matter;
19. Order denying Petition of interveners for dismissal of proceedings and appointing Trustees, filed July 13th, 1938;
20. The following original Exhibits which are in the nature of maps and photographs: Debtor's Exhibits Nos. 1, 16, 17 and 18;

Interlineation in item No. 18 made in pursuance to stipulation filed Oct. 25, 1938. [61]

21. This Praeceptum and service thereon;
22. Court Minutes of July 9, 1938;

said transcript to be prepared as required by law and the rules of this Court and the rules of the

United States Circuit Court of Appeals for the Ninth Circuit and to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit on or before the 1st day of November, 1938.

Dated: This 18th day of October, 1938.

GEO. B. THATCHER,
WM. WOODBURN,
WM. J. FORMAN,

Attorneys for Interveners
and Appellants.

Service of the foregoing Praecipe is hereby acknowledged this.....day of October, 1938.

.....
Attorney for Debtor and Appellee.

[Endorsed]: Filed Oct. 19, 1938. [62]

[Title of District Court and Cause.]

AFFIDAVIT

State of Nevada,
County of Washoe—ss.

Audrey Annett, being first duly sworn, deposes and says: That she is a citizen of the United States and a resident of the County of Washoe, State of Nevada, over the age of twenty-one years and not a party to the above entitled action; that on the 18th day of October, 1938, the said Audrey Annett served upon Walter Rowson a copy of the Praecipe in the

above entitled matter by leaving such document in the office of Walter Rowson in the E. C. Lyon Building, Reno, Nevada, with Margaret Harrington, the clerk of said Walter Rowson and the person then and there having charge of said office.

Dated: This 18th day of October, 1938.

AUDREY ANNETT.

Subscribed and sworn to before me this 18th day of October, 1938.

[Seal] LENA STATES,

Notary Public in and for the County of Washoe,
State of Nevada.

[Endorsed]: Filed Oct. 19, 1938. [63]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT.

United States of America,
District of Nevada—ss.

I, O. E. Benham, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the Matter of Penelas Mining Company, a corporation, Debtor, said matter being No. A-30-A on the reorganization docket of said Court.

I further certify that the attached transcript, consisting of 65 typewritten pages numbered from 1 to 65, inclusive, contains a full, true and correct transcript of the proceedings in said matter and of all papers filed therein, as set forth in the praecipe filed in said matter and made a part of the transcript attached hereto, as the same appear from the originals of record and on file in my office as such Clerk in Carson City, State and District aforesaid.

I further certify that accompanying this record, not attached hereto but made a part hereof, is a full, true and correct copy of appellant's Statement of Evidence, being pages 66 to 408, inclusive. [64]

I further certify that accompanying this record, in accordance with order of this court, dated November 26, 1938, are the following original exhibits:

- Debtor's Exhibit No. 1, being a large rolled map;
- Debtor's Exhibit No. 16, being a large photo;
- Debtor's Exhibit No. 17, being a large photo; and
- Debtor's Exhibit No. 18, being a large photo.

And I further certify that the cost for preparing and certifying to said record, amounting to \$63.75, has been paid to me by Messrs. Thatcher & Woodburn, attorneys for interveners and appellants.

Witness my hand and the seal of said United States District Court this 19th day of December, A. D. 1938.

[Seal]

O. E. BENHAM,
Clerk, U. S. District Court,
District of Nevada. [65]

United States Circuit Court of Appeals for the
Ninth Circuit.

No. 8947

In the Matter of

PENELAS MINING COMPANY, a corporation,
Debtor.

WILLIAM KING WHITE, ELIZABETH
WHITE KING, ROLLIN HENRY WHITE,
JR., R. H. WHITE and KATHERINE KING
WHITE,

Appellants,

vs.

PENELAS MINING COMPANY, a debtor,
Appellee.

PETITION FOR LEAVE TO APPEAL

To the Honorable Judges of the United States Dis-
trict Court of Appeals for the Ninth Circuit:

Your Petitioners, William King White, Elizabeth White King, Rollin Henry White, Jr., R. H. White, and Katherine King White, feeling themselves aggrieved by the order of the United States District Court for the District of Nevada, made by Honorable Frank H. Norcross, Judge thereof, on the thirteenth day of July, 1938, denying the Petition of these appellants for dismissal of the debtor's Petition of Penelas Mining Company under Section 77B of the Bankruptcy Act and appointing trustees of the debtor corporation, file this Petition

ad- [67] addressed to the discretion of this Honorable Court for leave to appeal from said order of said District Court upon matters of law.

Your Petitioners refer to Assignment of Errors filed by them simultaneously with this Petition, setting forth the errors by the Court below and giving grounds for this appeal and making said Assignment of Errors a part hereof.

In order that this Court may have a fuller recital of facts and of proceedings of the United States District Court for the District of Nevada, your Petitioners respectfully show the Court as follows:

The Penelas Mining Company is a mining corporation organized under the laws of the State of Nevada, and with an authorized and outstanding capital of 150,000 shares of the par value of \$1.00 each, 50% thereof being owned by L. D. Gordon and the other 50% being owned by your Petitioners, and such were the stockholdings in the corporation at the time of the filing of the debtor's Petition herein. The officers and directors of the corporation are: Rollin H. White (R. H. White) of Cleveland, Ohio, President and Director, L. D. Gordon of Fallon, Nevada, Vice-President and Director and Walter Rowson, of Reno, Nevada, Secretary and Director. Mr. Rowson is not a stockholder and is attorney for Mr. Gordon. R. H. White and Katherine King White hold and own promissory notes of Penelas Mining Company in the aggregate principal sum of \$140,000.00, all of which, including \$19,979.24 accrued interest, is due and unpaid since

June 1, 1938, and said persons are the only creditors of the [68] corporation, all other creditors having been paid in full between the date of the filing of the Petition and the hearing held by the District Court commencing on June 29, 1938. Said \$140,000.00 was advanced, or caused to be advanced, by R. H. White pursuant to an agreement dated May 1, 1935 between L. D. Gordon and R. H. White, under which White agreed to lend to the corporation \$50,000.00 with an option on his part to advance further sums not to exceed \$25,000.00. These monies, together with the additional amounts, were used for the purpose of erecting a milling plant and equipping the mining property of the debtor. The properties of the debtor were equipped and a milling plant put into operation in February of 1936.

At the time of the execution of the agreement of May 1, 1935, in which R. H. White agreed to make the loans to the debtor corporation above mentioned, Mr. Gordon agreed that he would, and subsequently did, hypothecate and pledge to Mr. White 37,500 shares of Penelas Mining Company stock by endorsing the certificates representing the same in blank and delivering them to Mr. White.

At and prior to the commencement of milling operations it was represented by Mr. Gordon, a mining engineer, to Mr. White, who is not a mining engineer, that the company had or would have, upon the commencement of operations, 18,000 tons of ore of a grade of \$20.00 per ton. From the date of the commencing of the operations in February,

1936 to May 31, 1938, slightly in excess of 18,000 tons were produced from the mining property of the Penelas Mining Company and milled [69] in its plant. Said ores, with a percentage recovery of approximately 92%, had a recovery value of \$10.779 per ton. The cost of mining, milling and other operations during said period, before provisions for interest, depreciation and depletion, was \$9.15 per ton, and after interest but before depreciation and depletion, \$9.64 per ton, leaving a net of \$1.14 per ton.

Practically all ores above the four hundred foot level have been exhausted and the only developed ores now in the mine are those between the five level and the four level and between the six level and the five level, which have an estimated tonnage of from 10,000 to 12,000 tons of an average assay value of approximately \$15.00 per ton, of which approximately \$13.50 is recoverable. The ore reserves, therefore, in the mine as presently developed, have a net recovery value of approximately \$50,000.00. The Petition for Debtor's Relief, hereinafter mentioned, refers to "potential ore" of approximately 30,000 tons with an average estimated value of \$15.00 per ton. If such ore exists at all, it lies below the six hundred foot level of the Penelas Mine. No development work has been done below the six hundred foot level and any estimate of either tonnage or grade of ore below said six hundred foot level is purely speculative and conjectural.

The Penelas Mine is situated about seventy miles southeasterly of Fallon, Nevada, the nearest railroad point. The only known assets of said corporation are its ore reserves and its mining and milling plant. The book value of the mining and milling plant is \$125,000.00. Upon the exhaustion [70] of the ores, the value of the mining and milling plant will be very much less than its cost. The total value of the known assets of the debtor, therefore, is less than the indebtedness now owed by the debtor corporation to R. H. White and Katherine King White, Petitioners herein.

Commencing with the operation of the debtor's property in February, 1936, and continuing to the date of the filing of the Petition of the debtor, hereinafter mentioned, L. D. Gordon, the Vice-President of the debtor corporation, has received from the debtor corporation a salary of \$800.00 per month and has managed the operations thereof.

In the month of May, 1938 no interest having been paid upon any of appellants' notes hereinbefore mentioned, and the principal of the whole thereof being about to become due, appellant R. H. White demanded of Mr. Gordon that he relinquish control of the operations of the debtor corporation to appellants, which request was by Mr. Gordon refused.

Prior to the filing of the Petition of the debtor corporation herein, hereinafter mentioned, appellant R. H. White duly and regularly presented the certificates representing the said 37,500 shares of Penelas Mining Company stock hypothecated to

him by Mr. Gordon and requested that the same be transferred to appellants herein, which transfer was refused. On the seventh day of June, 1938, Mr. White again duly and regularly presented the certificates representing the said 37,500 shares of stock so hypothecated to him by Mr. Gordon to the company and to its Secretary, Walter Rowson, for transfer to him as pledgee, but transfer thereof was [71] again refused.

On the first day of June, 1938, a Petition was filed by Mr. Gordon and Mr. Rowson, on behalf of the debtor corporation, in the District Court of the United States for the District of Nevada, for reorganization under the provisions of Section 77B of the Bankruptcy Act, which said Petition set out the existence of the indebtedness hereinbefore mentioned to appellants, and attached thereto was what purported to be a certified copy of a resolution of the debtor corporation purporting to authorize the filing of said debtor's Petition.

At the time of filing the debtor's Petition, and prior thereto, Mr. Gordon and Mr. Rowson knew, and at and prior to the hearing appellants had so advised them that appellants would not consent to any plan of reorganization under the provisions of Section 77B of the Bankruptcy Act.

The purported resolution of the debtor corporation attached to said Petition of the debtor corporation and certified by Walter Rowson as Secretary of the debtor corporation as having been adopted at a regular meeting of the Board of Directors of said

company on May 2, 1938, and which purported to authorize the Vice-President or Secretary to file the Petition of the debtor under the provisions of Section 77B of the Bankruptcy Act, was not adopted by the Board of Directors of the debtor corporation acting as a Board, and no meeting of the Board of Directors of the debtor corporation was ever held authorizing the filing of the debtor's Petition and no notice of the alleged meeting of the Board of Directors of May 2, 1938, which purported to [72] authorize the Vice-President or Secretary to file the Petition, was ever given to Rollin White, one of the directors, and the withholding of notice to White was deliberate and intentional.

At all times subsequent to May 2, 1938 and up to the filing of the petition, the Vice-President and Director Gordon and Secretary and Director Rowson deliberately and intentionally concealed from White the fact, if it were a fact, that Directors Gordon and Rowson were authorized to file a debtor's Petition for the Penelas Mining Company under Section 77B of the Bankruptcy Act, although White and his family were the owners of 50% of the capital stock of the corporation and White had pledged to him an additional 25% of said stock and White and his wife, interveners herein, held all the indebtedness against the corporation.

Upon the filing of said debtor's Petition, the District Court at an ex parte hearing entered an Order approving the said debtor's Petition and ordering that the debtor continue in possession of

all its properties and assets and enjoined all persons from enforcing any claim against the debtor corporation and by said Order fixed the twenty-ninth day of June, A. D. 1938, for a hearing upon the question of permanently continuing the debtor in possession or of appointing a permanent trustee.

On the 25th day of June, 1938, the appellants herein filed with the said District Court a Petition for Leave to Intervene in said proceedings, praying that they be granted leave to file and participate in a hearing of a Petition for Orders Setting Aside the Approval of the Debtor's [73] Petition. On the 27th day of June, 1938, said District Court entered an order allowing the filing of a Petition in Intervention by appellants. Said Petition in Intervention was thereafter filed by appellants and prayed that the Petition of the debtor corporation be dismissed for the reason that said petition was not filed in good faith and had not theretofore been authorized by any valid meeting of the Board of Directors of said debtor corporation.

A hearing was held upon said Petition in Intervention of appellants herein, beginning on the twenty-ninth day of June and continuing on the thirtieth day of June and the first, second, sixth, seventh, eighth, and ninth days of July, 1938, at which hearing there was introduced both oral and documentary evidence which established the facts hereinbefore set forth in this Petition. Thereafter and on the thirteenth day of July, A. D. 1938, said District Court made and entered its order denying

the Petition of the Interveners, the appellants herein, and appointing three trustees for the property and assets of the debtor corporation.

Contemporaneously with the filing of this Petition, Petitioners are furnishing to the Court a full copy of each and all of the Petitions and Orders hereinbefore mentioned.

The said Order of the District Court of July 13, 1938 is erroneous in matters of law, in that the debtor's Petition and the evidence adduced on the hearing of appellants' Motion to Dismiss established:

(a) that no meeting of the Board of Directors of Penelas Mining Company was ever held authorizing the filing [74] of said Petition, and

(b) that the debtor's Petition was not filed in good faith in that:

(1) Said Petition was not authorized to be filed by the Board of Directors of Penelas Mining Company, acting as a Board;

(2) No meeting of the Board of Directors of Penelas Mining Company was ever held, authorizing the filing of the Petition;

(3) No notice of the alleged meeting of the Board of Directors of May 2, 1938, which purported to authorize the Vice-President, L. D. Gordon, and Secretary, Walter Rowson, to file the Petition was ever given to Rollin White, the President and one of the Directors, and the withholding of notice to said White as President and Director was deliberate and intentional;

(4) At all times subsequent to May 2, 1938 and up to a day or two prior to the filing of the debtor's Petition, Vice-President and Director L. D. Gordon and Secretary and Director Rowson deliberately and intentionally concealed from President and Director White the fact, if it were a fact, that the Directors Gordon and Rowson had authorized, or purported to authorize, the filing of the debtor's Petition;

(5) Said debtor's Petition was not filed with the actual intent and purpose to use Section 77B of the Bankruptcy Act to effect a plan of reorganization, but on the contrary was filed for the purpose of perpetuating the affairs of the debtor corporation in L. D. Gordon, the Vice- [75] President thereof, and his attorney, Walter Rowson, Secretary and Director thereof, for as long a period as possible and with the purpose of intent of hindering and delaying the interveners, the appellants, herein, the sole creditors of the debtor corporation in the enforcement of the indebtedness of the debtor corporation held by them;

(6) The debtor corporation had no basis for expecting that a reorganization could be effected under the provisions of Section 77B of the Bankruptcy Act and there existed no probability that a reorganization could be so effected for the reason that appellants herein were the sole creditors of said debtor corporation and the owners of 50% of the stock therein, and would not agree to any such re-

organization and had theretofore so informed said debtor, and the assets of the debtor were insufficient to provide for the payment in full in cash of appellants' claims or for protecting their claims in the manner provided by sub-section b, Clause 5 of Section 77B of the Bankruptcy Act;

(7) No possible feasible or practical plan of reorganization of the debtor could be proposed in said proceeding and any plan that might be proposed would necessarily be wholly visionary, speculative and impracticable, for the reason that the realizable assets of the debtor corporation consisted wholly of its mining and milling equipment and its known ores, which said assets were and are insufficient to satisfy the debts owing to appellants herein and any attempts to discover further ores in the property of the debtor corporation would necessarily be at the expense of the depletion [76] of the realizable assets of the debtor corporation and at the hazard of appellants, the creditors herein.

That said order was further erroneous in appointing trustees for the debtor for the same reasons hereinbefore stated.

Wherefore, Petitioners pray that they may be allowed to appeal in matters of law herein; that the prayer of this Petition be granted and a citation be issued directed to Penelas Mining Company, a corporation, commanding it to appear before the United States Circuit Court of Appeals for the Ninth Circuit, to do and receive what may appertain to justice to be done in the premises, and that a

transcript of the records and proceedings in said proceedings, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 8th day of August, A. D. 1938.

WILLIAM KING WHITE, ELIZABETH WHITE KING, ROLLIN HENRY WHITE, JR., R. H. WHITE, and KATHERINE KING WHITE,

Petitioners,

By GEO. B. THATCHER,
WM. WOODBURN,
WM. J. FORMAN,

Attorneys.

[Endorsed]: Filed Aug. 9, 1938. Paul P. O'Brien, Clerk. [77]

[Title of Circuit Court of Appeals and Cause.]

ASSIGNMENT OF ERRORS

Comes Now William King White, Elizabeth White King, Rollin Henry White, Jr., R. H. White, and Katherine King White, appellants herein, and file this their Assignment of Errors, complaining as follows:

I.

That the District Court erred in denying appellant's petition to dismiss the debtor's petition herein

for the reason that the debtor's petition and the evidence adduced on the hearing of appellants' petition to dismiss established that no meeting of the Board of Directors of Penelas Mining Company was ever held authorizing the filing [80] of said petition.

II.

That the Court erred in denying appellants' petition to dismiss the debtor's petition herein for the reason that the debtor's petition and the evidence adduced on the hearing of appellants' petition to dismiss established that the debtor's petition was not filed in good faith in that:

(1) Said petition was not authorized to be filed by the Board of Directors of Penelas Mining Company, acting as a Board.

(2) That no meeting of the Board of Directors of Penelas Mining Company was ever held, authorizing the filing of the petition.

(3) That no notice of the alleged meeting of the Board of Directors of May 2, 1938, which purported to authorize the Vice President, L. D. Gordon, and Secretary Walter Rowson, to file the petition was ever given to Rollin White, the President and one of the Directors, and the withholding of notice to said White as President and Director was deliberate and intentional.

(4) That at all times subsequent to May 2, 1938 and up to a day or two prior to the filing of the

debtor's petition, Vice President and Director L. D. Gordon and Secretary and Director Rowson, deliberately and intentionally concealed from President and Director White the fact, if it were a fact, that the Directors Gordon and Rowson had authorized or purported to authorize, the filing of the debtor's [81] petition.

(5) That said debtor's petition was not filed with the actual intent and purpose to use Section 77B of the Bankruptcy Act to effect a plan of reorganization, but on the contrary was filed for the purpose of perpetuating the affairs of the debtor corporation in L. D. Gordon, the Vice President thereof, and his attorney Walter Rowson, Secretary and Director thereof, for as long a period as possible and with the purpose of intent of hindering and delaying the interveners, the appellants herein, the sole creditors of the debtor corporation in the enforcement of certain notes of the debtor corporation held by them.

(6) That the debtor corporation had no basis for expecting that a reorganization could be effected under the provisions of Section 77B of the Bankruptcy Act and there existed no probability that a reorganization could be so effected for the reason that appellants herein were the sole creditors of said debtor corporation and the owners of a 50% stock interest therein, and would not agree to any such reorganization and had theretofore so informed said

debtor and the assets of the debtor were insufficient to provide for the payment in full in cash of appellants' claims or for protecting their claims in the manner provided by sub-section (b) Clause (5) of Section 77B of the Bankruptcy Act.

(7) That no possible, feasible or practical plan of reorganization of the debtor could be proposed in said proceeding and any plan that might be proposed would necessarily be wholly visionary, speculative and impractic- [82] able, for the reason that the realizable assets of the debtor corporation consisted wholly of its mining and milling equipment and its known ores, which said assets were and are insufficient to satisfy the debts owing to appellants herein and any attempts to discover further ores in the property of the debtor corporation would necessarily be at the expense of the depletion of the realizable assets of the debtor corporation and at the hazard of appellants, the creditors herein.

III.

That the District Court erred in making and entering its order of July 13, 1938, wherein said Court denied the petition of interveners, appellants herein, to dismiss the petition of debtor and in appointing trustees for the debtor and in the whole of said order for the reasons set forth in Assignments I and II herein.

Wherefore, appellants pray that said order of the District Court dated July 13, 1938 may be reversed

and the petition of the debtor corporation herein be dismissed.

GEO. B. THATCHER,
WM. WOODBURN,
WM. J. FORMAN,
Attorneys for Petitioners
and Appellants.

[Endorsed]: Filed Aug. 9, 1938. Paul P. O'Brien,
Clerk. [83]

At a Stated Term, to-wit: The October Term A. D. 1937, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday, the fifteenth day of August in the year of our Lord one thousand nine hundred and thirty-eight.

Present:

Honorable Francis A. Garrecht, Circuit Judge,
Presiding.

Honorable Clifton Mathews, Circuit Judge.

[Title of Circuit Court of Appeals and Cause.]

ORDER ALLOWING APPEAL

Upon consideration of the petition of William King White, Elizabeth White King, Roland Henry White, Jr., R. H. White and Katherine King White, for an allowance of appeal herein under section 24(b) of the Bankruptcy Act, filed August 9, 1938, and of the assignments of error thereon, filed therewith, and by direction of the court,

It Is Ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the order of the District Court of Nevada, filed and entered on the 13th day of July, 1938, be, and hereby is allowed, conditioned upon the giving of a cost bond in the sum of Two Hundred and Fifty Dollars (\$250.00) with good and sufficient security within ten days from date. [85]

I hereby certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled Cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 15th day of August, A. D. 193.....

.....
Clerk, U. S. Circuit Court of
Appeals for the Ninth Circuit.

No. 8947

United States Circuit Court of Appeals for the
Ninth Circuit.

Certified Copy of Order Allowing Appeal

[Title of Circuit Court of Appeals and Cause.]

CITATION ON APPEAL

To Penelas Mining Company, a corporation, debtor
above named, Greetings:

You Are Hereby Cited and Admonished to appear
in the United States Circuit Court of Appeals for

the Ninth Circuit, in the City of San Francisco, State of California on the 16th day of September, 1938 pursuant to an order allowing an appeal from the District Court of the United States for the District of Nevada, wherein you, Penelas Mining Company, a corporation, are appellee and William King White, Elizabeth White King, Rollin Henry White, Jr., R. H. White, and Katherine King White are the appellants, to show cause, if any there be, why the order and decree in said appeal mentioned should not be reversed and [86] corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Francis A. Garrecht, Judge of the United States District Court of Appeals for the Ninth Circuit, this 15th day of August, 1938.

FRANCIS A. GARRECHT,
Judge of the United States
Circuit Court of Appeals
for the Ninth Circuit.

[Endorsed]: Filed Aug. 19, 1938. Paul P. O'Brien, Clerk. [87]

[Title of Circuit Court of Appeals and Cause.]

Service of Citation on Appeal and Order Allowing Appeal in the above entitled action, by copy, is hereby admitted this 18th day of August, 1938.

WALTER ROWSON,
Attorney for Appellee [89]

In the District Court of the United States in and
for the District of Nevada.

No. A-30-A

In the Matter of Penelas Mining Company, Debtor.

STATEMENT OF EVIDENCE

The following is a statement of the evidence produced in the trial of the above entitled cause deemed by the appellants necessary for the consideration of the errors assigned:

L. D. GORDON,

called as a witness on behalf of the Debtor, was first duly sworn and testified as follows:

That he lives in Fallon, Nevada and has lived in Nevada for twenty-five years or more and is a mining engineer and mine manager by profession, having practiced the same for thirty years; that at the present time, he is manager, vice-president [90] and a director of the Penelas Mining Company, the debtor in the present proceeding. Prior to his association with the Penelas Mining Company, his mining activities were as follows:

In 1906 he acquired the nucleus of the Round Mountain Mining Company in Nye County, Nevada, comprising about sixty acres which was sold and thereafter he retained an interest in the company. In 1907 he was in the states of Zacatecas and Coahuila, Mexico. In 1908 he was in the Gold Circle District where he acquired an option on the Elko Prince mine and St. Paul property. From 1910 to

(Testimony of L. D. Gordon.)

1920 he was manager of the Cerro Gordo Mine in Inyo County, California. In 1916 he bought the property of the Fairview Round Mountain Mining Company at Round Mountain, Nevada, remaining as manager of that company until 1923 when he took charge of the Candelaria Mine in Mineral County, Nevada, remaining there for two years. In 1926 he acquired some silver lead property in Quartz Mountain and in 1931 he acquired an option on the Penelas property.

He acquired the Penelas property through Dr. Sawyer, who had been temporary administrator of the Penelas Estate. At the time Gordon first visited the Penelas property there was a corrugated iron shack where Penelas had lived and also a small tool shack. There was a little three-quarter cornered hole about one hundred feet deep in which Penelas had had a windlass. To the north of that hole Penelas had driven a drift about two hundred feet down slope. South of the shaft there was a drift about fifty feet, both drifts being full of muck for the entire distance of two hundred and fifty feet and there being only eighteen or twenty inches of room between the top of the muck pile and the back of the drift. Mr. Gordon was forced to lie on his back when he took samples. Gordon secured an option on the property and [91] started to work. He brought in a little six-horse power Fairbanks Morse hoist. He then cleaned out the muck and put the shaft in condition. This took some little time for

(Testimony of L. D. Gordon.)

the rock was very hard. In the meantime, a Mr. Beach had jumped all of the Penelas claims. An injunction was obtained restraining Beach. At this time, Gordon's resources became exhausted and he quit work temporarily, having permission of the administrator to do so in view of this litigation. The litigation lasted for four years and the administrator of the Penelas estate finally won the suit to quiet title. From the litigation and negotiations with Beach, the Penelas Mining Company acquired about thirty-one claims. Mr. Gordon said that the amount of his investment prior to the incorporation of the Penelas Mining Company was \$24,000.00 and that this was capitalized on the books of the company.

(The following was objected to as being immaterial, but admitted for the time but with leave to strike it out later.)

When managing the Cerro Gordo, Mr. Gordon found the company about \$400,000.00 in debt and that the mine had not paid in forty years. Before he left the mine, he had paid all the \$400,000.00 debt in addition to other expenditures of \$250,000.00 and the company paid over \$300,000.00 in dividends.

On the Round Mountain property, while Gordon was in charge, he increased the acreage of the company's property from sixty acres to about four thousand acres and added about \$5,000 in physical assets to it. That company paid something like

(Testimony of L. D. Gordon.)

\$400,000.00 in dividends. These payments of dividends were not made while Mr. Gordon was manager.

When he took over the Fairview Round Mountain it had not been operating for ten years. At the termination of his manage- [92] ment it had produced \$800,000.00, paid \$188,000.00 in dividends and had \$60,000.00 in cash left at the time operations were discontinued.

(End of objected testimony)

Mr. Gordon met Mr. White in 1929 and also had correspondence with Mr. White from that date on. In 1934 White put up \$12,000.00 for a one-quarter interest in Gordon's lease and option with an option to purchase another one-quarter—that is, he had the right to put up a total of \$25,000.00 to match Gordon's investment and acquire a one-half interest in the lease and option. Mr. White put up the money as needed and prior to May 1, 1935, he had put up \$24,000.00 and on May first he advanced another \$10,000.00 prior to the execution of the agreement of May 1, 1935.

Mr. White objected to a partnership agreement and wished to have a corporation formed, which was agreed to by Mr. Gordon. Mr. Gordon wrote Mr. White outlining what he thought would be necessary. White came to Round Mountain and said he didn't like the idea of selling stock to anybody. He said that he had no objection to advancing the

(Testimony of L. D. Gordon.)

necessary money, possibly \$75,000.00, or that he might go as high as \$100,000.00.

At that time Mr. White was insistent that no mill be built larger than thirty tons. However, a fifty ton mill was built. The estimate on this was \$65,000.00 and the cost came to \$68,000.00. Mr. Gordon underestimated the cost of putting the shaft in shape to make a real working shaft and a lot of other collateral things that were necessary; the shaft costing more money than anyone would estimate. This ran over the estimate because the shaft was out of line both ways and the rock [93] was extremely hard and there were places where, to make it straight, you had to timber back in the foot walls as much as seven, eight or nine feet. There was also no provision made for any working capital, which was one of the reasons why the estimate was low. Mr. Gordon's estimate was to put the mine in production.

(Objections to the following. Objection overruled)

Gordon and White discussed the execution of promissory notes by the Penelas Mining Company to White that extended over a period of four or five days. White insisted on notes of two and one-half years while Gordon objected to such short term notes. White stated to Gordon that these notes could be extended if necessary. Last July, Gordon and White had a discussion in which White told Gordon that he needed a vacation and should receive medi-

(Testimony of L. D. Gordon.)

cal treatment. Gordon stated that he didn't want to go away with all these things hanging over his head. White told Gordon that he would trust him on the notes and to forget about them. He also made that same statement in the presence of Mrs. Gordon. Gordon eventually went on a vacation after a month or two.

The Penelas Mining Company was organized under the Nevada law in August, 1935. Following the corporate organization, this group of mining claims, the Leader group, and all other properties mentioned and described on page two of the Petition for Relief, were acquired by the corporation and a deed was executed by the administrator of the Penelas Estate. The property was eventually paid for and the deed was delivered to Gordon, who in turn made and recorded a deed to the Penelas Mining Company from himself. The Penelas Mining Company acquired everything there and since that time has been engaged in mining and extracting ores and reducing it in its mill on the property, [94]

According to page two of the Petition for Relief, the book value of the properties mentioned is \$183,219.00. The value of the mine and mill plant, taken from the books, is \$125,000.00 and there is also an item for real estate of \$400.00 which represents a lot on Williams Avenue, Fallon, Nevada. The remaining items shown in the Petition, such as organization expenses, inventories and supplies, are

(Testimony of L. D. Gordon.)

taken from the corporate books. The total of all those items under the list of assets is \$334,389.00 and that total will have to be changed in order to show the actual cash on hand as of this date and there will be some change in connection with the bullion in transit and the iron slag; the date of this being June 1, 1938. To the gold and silver in solution in the mill there should be substituted approximately \$7,000.00 bullion shipped. These statements are approximations but not guess work. The books will show that the promissory notes which have been executed to Mr. White by the Penelas Mining Company total \$140,000 and interest in the sum of \$19,978.24 up to and including the date of the Petition,—May 31, 1938. The books will have to be changed to show accounts payable. All current bills now have been paid.

(The following paragraph objected to but admitted subject to the objection)

Regarding the item \$2,289.80 under the heading "Accounts Payable" assumed from the Wild Rose Mine, Mr. Gordon said that he and Mr. White carried on as a partnership item of the Penelas Mining Company some development work across from Dayton, Nevada. He and Mr. White purchased an Ingersoll Diesel semi-portable compressor and paid on it some \$1,200.00. Rather than sacrifice that \$1,200.00, the compressor was moved to the Penelas Mine [95] where it has been used since and that is the amount remaining unpaid on the purchase price.

Gordon said that rather than to forfeit the \$1,200.00, since they only had one at the Penelas Mine, it seemed to be good business to take it over there. The Wild Rose was a partnership venture and Mr. Gordon and Mr. White stood for those expenditures fifty-fifty; half of everything being taken out of each of their salaries. This was a joint venture between Mr. White and Mr. Gordon, who held it under a lease and option.

The item of wages is about the same.

The books will show that the third installment of the real and personal property tax had not been paid. They will also show that Mr. White was paid a salary of \$4,898.50 as president of the company. Mr. White does not live in Nevada and aside from a few trips out here, he hasn't participated much in the management.

(It was here stipulated that the total authorized capitalization of the Penelas Mining Company was \$150,000.00).

Mr. Gordon testified the stock had all been issued, there being none left in the treasury. The Penelas Mining Company is not in a position to pay Mr. White, its sole creditor, his past due claim amounting to \$140,000.00 and accrued interest of approximately \$19,000.00. Mr. Gordon further stated that there was no doubt in his mind that the entire indebtedness could be paid in full if he was permitted to continue. He based his opinion upon recent developments on the five hundred and six hundred foot levels that have taken place within the last two

(Testimony of L. D. Gordon.)

or three months and the expectations of the ore continuing to a depth that similar properties in the same general region and of the same geology have continued. He believes this indebtedness principal and interest [96] could be paid off within three years. The property itself has been fully paid for and is absolutely owned by the Penelas Mining Company; the total purchase price being \$45,000.00. He based his opinion also on the fact that the Penelas Mine has now something around 12,730 tons of ore assured. On the 500 foot level, ore is broken and ready to mill in an amount of 1,330 tons. On a stope in the 100 foot level south of the shaft, there is about 300 tons. There is remaining in the 400 north stope about 100 tons. On the 500 foot level, north of the shaft, there is reasonably assured 550 tons. That is a block of ore 110 feet long, 6 feet wide and 100 feet in vertical extent.

On the 600 foot level there is opened a stope 110 feet long, 6 feet wide, with 100 feet of vertical extent, making a total of 12,730 tons.

The ore on the 300 and 400 levels are not of especially good grade and would average probably \$7.00 to \$8.00 a ton. The balance of the ore will average \$15.00 a ton. The mill heads so far this month have averaged \$17.00, and as far as the 600-ft. level is concerned, they haven't started a stope, but the sill is 110 feet long. On the 600 foot level, the average of the muck samples and the car samples is \$23.00 a ton and the ore from the 500 is averaging

(Testimony of L. D. Gordon.)

considerably better than \$15.00—some days \$20.00 and \$25.00. The extraction is about 90% and in the first twenty days of June \$14,800.00 in bullion was shipped. It is expected, based upon the assay of the solution heads and the heads, miner's tails, from \$7,000.00 to \$7,500.00 in bullion will be shipped in the last ten days of June.

Mr. Gordon gave the following testimony on direct examination:

“Q. (Mr. Rowson) Based also, Mr. Gordon, upon your intimate knowledge of the Penelas Company's property and [97] your past experience in mining as a mining engineer, how much potential ore would you say may be reasonably expected from that property at this time, in view of the present state of development?”

A. All of those things are largely a matter of judgment. I have had some 25 years' experience with these Nevada eruptive formation deposits. Out there we are blazing the trail—there are no other mines in the district.

Q. How close is the nearest producing mine to the Penelas?

A. Well, I don't know of any what might be called producing mine. There was some production going on at Fairview, which is in an airline, at a guess, would be probably, oh, around 25 miles. There is some little production at Wonder, which I would say would be about 30 miles. There have been no other worth while

(Testimony of L. D. Gordon.)

producers in that district. However, the formation at Wonder and the formation at Penelas are very similar. The ore occurrence is very similar and the type of vein is very similar. Wonder went down, they worked to a depth of 2,000 feet. The productive ore extended to a depth of about 1500 feet, so in figuring potential ore I am figuring that this deposit will go down a thousand feet. It is down 600 now and looks better there than at any other point in the mine. The fissure is even better to find, just as open, wider, and shows absolutely no sign of weakness. My experience in these recent eruptive rocks has been that you generally dig out your ore deposits in from [98] 50 to 200 feet, or if you get them going down strong below that, they are liable to continue to a very considerable depth.

Q. Would you say that an estimate of a continuance of that ore deposit to a depth of one thousand feet would be conservative estimate, in view of what you have stated?

A. I would say, in view of Wonder having produced pay ore to a depth of 1500 feet, with the same type fissure and same formation and same crushing of the vein, that we have in the Penelas—in fact, it is the nearest thing I have ever seen to the Penelas vein—I would say yes, that is conservative, especially with the showing on the 600 now.

(Testimony of L. D. Gordon.)

Q. Did you say how far in miles the Wonder is from the Penelas, air line?

A. Yes, it must be probably 30 miles. That, however, is an estimate, but that is fairly close I think.

Q. Are you familiar with the properties at the Wonder?

A. I have been there several times.

Q. Have you ever been underground and examined it?

A. Not far, no, but I have had the opinion of a great many men who have seen both properties.

Q. That is the Penelas property and the Wonder? A. Yes.

Q. And what, in your best judgment, may you reasonably believe will be the value of these potential ores? [99]

A. Well, considering the value of the ore on the 600 and the fact that everything we have milled this month has averaged \$17.00, with not a whole lot of it from the 600 and some of this lower grade mixed in, that those values have been \$17.00, I think it is fairly conservative to put the values at \$15.00.

Q. While you answered the question partially, the previous question, Mr. Gordon, by stating, in your judgment the ore would continue to a depth of one thousand foot level at

(Testimony of L. D. Gordon.)

least, you did not state how much ore your estimate there will be between the 600 and 1000 foot levels?

A. I estimated 30,000 tons.

Q. Will you kindly state, Mr. Gordon, what other potentialities that property has, in your opinion, based upon your intimate knowledge of the property, for opening up of other ore bodies, other veins, in addition to those that have already been developed?

A. Well, that is not a matter of potentiality. We have a vein in a cross-cut east of the shaft on the 300-ft. level that is a vein not exactly like the Penelas. It is sheeted zone or sheared zone in rhyolite and it shows this sheeting over a width of five feet. Now we have done some drifting on that and I have not opened an ore shoot up on it. We have had muck samples of from three dollars to five dollars a ton and in the face of the other drift right now you can go in there and pan gold. There are many places in the Penelas vein where [100] you can drift for a couple of hundred feet without any values whatever, but based upon the appearance of the vein and my experience with veins of that same type, I would expect to find ore shoots in that vein, because it is a very typical vein of this Nevada type of deposit.

Q. How wide is the vein?

A. Oh, from, I would say, about five feet; the sheeting that carries enrichment is about five feet wide.

(Testimony of L. D. Gordon.)

Q. Do you have a map of the underground workings of this property?

A. Yes sir."

(At this time, counsel, Mr. Rowson offered a map for identification marked as Debtor's Exhibit for Identification, No. 1)

Mr. Gordon testified that the map was prepared at his direction by L. H. Hinkley and John Dynan in 1935 and 1936. Mr. Hinkley is a mining engineer and a qualified surveyor and Mr. Dynan is also a mining engineer who was for twenty or twenty-five years manager of the Tonopah Extension and several other companies.

This map accurately portrays the underground working of the Penelas group, the Penelas group being in the extreme north-western tip of Nye county, almost at the junction of Nye, Lander, Mineral and Churchill counties, and is about eighty miles by road from Fallon. This map does not portray the work on the 600 foot level because the 600 has not been surveyed. [101]

(At this time Mr. Thatcher requested leave to ask a few question.)

In response to Mr. Thatcher's questions, Mr. Gordon testified that Mr. Dynan was a mining engineer, in the employ of the Penelas company for probably a year doing all the underground surveying and was the assistant to Mr. Gordon. He took all the notes that Hinkley had left, checked on and

(Testimony of L. D. Gordon.)

found them accurate and from there on carried on the work. About one-half of the work was done by Dynan. He worked on the 400, 500 and did some work on the 300, but none on the 600. Mr. Dynan lives in Fallon and no attempt was made to subpoena him. He has been ill and his wife said he had the flu. Mr. Thatcher then stated no objection would be made to the map if it was used for the purpose of illustrating the testimony, but no agreement would be made that the map was accurate. Thereupon the court admitted the map, subject to any reasonable objection; the same being marked Debtor's Exhibit No. 1. Mr. Rowson then resumed questioning Mr. Gordon.

Mr. Gordon, referring to Debtor's Exhibit 1, testified that the shaft is about on the east and west coordinate 6200 and north and south coordinate 5000. That is where the lines bisect, which is practically the collar of the shaft. Each level is shown in a different color; the 100 is in orange; the 200, green; the 300, red; and the 400 yellow, and the workings outlined in pencil that aren't inked in is the five hundred foot level; the scale of the map being twenty feet to the inch. Mr. Gordon thereupon sketched in roughly the 600 foot level. The vein on the six is 32 feet out here from the five. Those are the exact dimensions, that is, 32 lateral feet on the dip of the vein between five and six. In other words, if the [102] position of the shaft on the 500 was here, the position of the shaft on the 600

(Testimony of L. D. Gordon.)

is 32 feet to the east. The difference between the levels is 100 feet approximately. The level in orange is the 100 foot level. The small squares with diagonal line through them represent ore chutes. By that is meant ore passageways, not an ore shoot. Those are chutes from which ore is drawn. The farthest one south in orange, little squares with diagonal lines out to the farthest one north, represent the ore bodies on the Penelas vein, the Penelas vein coming out a little north of the survey point marked on the map as 1046; then a cross-cut, a diagonal cross-cut, is run and at a point marked 08 another ore shoot was encountered. Beginning at a point marked 08 to a point marked 1073 there is either a branch of the Penelas vein, or what is called the Leader vein. It is not certain that this is a separate vein; it could very well be a branch of the Penelas vein; but at the point marked 08 on the map, the vein to which he had referred, called the Penelas vein, got what he called rather anaemic. In the meantime, in a stope between the two and the one there was an indication of a split or a branch of a new vein, so with that in mind a cross-cut was driven and did pick up either the new vein or a split of the Penelas, and the work from 08 over to a point marked 1073, is on part of the Penelas vein or it might be a new vein.

As far as the Victor vein is concerned, the numbers marked on the orange color, 103, 104 and 105

(Testimony of L. D. Gordon.)

and up to 109, are the original works on the 100 foot level, looking toward the opening of the Victor vein on that level. The position of the Victor vein on that level is indicated at a point marked 108 and extending a little northeast, and a point southwest of there. The chutes in the vicinity of 108 and 109, or passages, are on the [103] Victor vein. Then from those chutes on southwest, a drift was extended in an endeavor to find additional ore shoots on the Victor vein, which were not found. The drift was extended on the 100 foot level in the neighborhood of 100 feet.

The 200 foot level on the map is in green. Beginning at a point on the map in green marked 1047, out to a point marked 1075, all of the same squares and diagonal line bisecting them, represent ore shoots on the Penelas vein; and also from a point marked 1019 south of the shaft on the 200 and north from there to where these designated ore shoots end are shoots on the Penelas vein south of the shaft on the 200. Beginning at a point marked 1019, and up to a point marked 203, is lateral work designed to open the Victor vein on the 200 foot level. The point marked 204 to a point a little southwest of 205 and beginning at point 206 to a point a little north of 209, the symbol for ore chutes, which is the same square bisected, represent ore chutes installed on the Victor vein, on the 200 foot level. Right at a point marked 209, in green on the map, a very definite fault occurred in the Victor vein. The fault

(Testimony of L. D. Gordon.)

has a strike of approximately southeast and northwest and has a dip to the southeast. From that point on, marked 209, to a point marked 211, the work was designed to pick up, if possible, the faulted segment of the Victor vein. There were some values, but there was no ore milled from there. Values were found from \$2.00 to \$10.00 and down, but those were cut samples. There were no muck samples from there that really allowed working. A drift about eighty feet was completed before picking up what seemed to be the faulted segment of the Victor vein. After striking what was believed to be the Victor vein, a drift was driven about 80 feet. Between the point marked 209, a cross-cut was driven [104] southeast approximately 40 feet, to make sure that the faulting hadn't been different from the faulting encountered up to that time. The ore shoot ended about twenty feet north of point 209 so the total works beyond where the last ore in the Victor vein occurred on the 200 foot level would be about 220 feet. From a point marked 1075 in green on the map a drift was driven north on the Penelas vein just about 300 feet, with no results of commercial ore. The fissure continues as strong as it had in other portions of the mine, the hanging wall was just as well defined, and there was no change in the formation but no ore was encountered that would pay. At the end of the drift on the 200 level north a drift was driven east approxi-

(Testimony of L. D. Gordon.)

mately 18 feet from a point marked 220 on the map, and then about 35 feet of work from a point marked 218 on the map, all without results. From a point marked 214, a cross-cut was driven almost due west on the 200 foot level a distance of 320 feet without encountering profitable ore. Values occurred sporadically, so that work was discontinued. The total lateral work done from point 214 would be 363 feet northerly and easterly and 320 feet westerly, being 320 feet of cross-cutting and 360 feet of drifting.

The 300 foot level is in red. The shaft on the 300 foot level shows about 10 feet northwest of point 1000. At the point between 303 and 301—that is north of the shaft—the first ore shoot in the Penelas vein was encountered. That ore shoot extending from that point between 303 and 301 north to a point just north of a point designated as 1061 is the first ore shoot encountered in the Penelas vein north of the shaft on the 300 foot level. From that point; that is, a point just north of point 1061, a drift was driven north approximately 100 feet on the Penelas vein without encountering any ore shoots. At a [105] point marked 323 some low-grade ore was encountered. By that is meant it would perhaps go from \$6.00 to \$7.00 or \$8.00 a ton. That extended for a length of about 35 feet and looked to be the top of the ore body. It was badly leached. An attempt was made to get a stope on it; work was started up a short distance and the ore got lower grade and the work was stopped. From that point,

(Testimony of L. D. Gordon.)

beginning at the last chute—the last north chute—on the Penelas vein, a drift was driven about 125 feet north on the Penelas vein, with the same well-defined fissure of hanging wall, but no ore. In view of the fact that work had been done much further north on the 200 level, that work was discontinued at that point on the 300. In addition, a cross-cut was driven about forty feet northwest from a point marked 324 on the map, as there was an indication there of a rather wide zone and only the hanging wall encountered and Gordon wanted to determine where the foot-wall of the ore body was. For a distance in this cross-cut just referred to, of about 30 feet, the cross-cut was in low-grade material. There were assays every day, of two, and three, and three and a half in this zone and up to from a point marked 324 to a point marked 325 the work was in this low grade zone. Then from that point a drift was driven north, or northerly, 60 feet along that low grade zone, with the same result, so that work was discontinued. A slight cross-cut to the east on the 300, which is on the map near a point on the 100 marked 1073, was driven to connect with a stope that came up on the same vein from the 400 foot level. That covers the work north of the shaft.

Beginning at a point just northwest of the point marked 1000 on the 300 foot level, all of the workings, or practically all of them, south and southwest

(Testimony of L. D. Gordon.)

of that point, were designed to open the Victor vein on the 300 foot level. The work south of [106] the shaft on the 300 foot level, looking toward the opening of the Victor ore body on the 300 foot level amounted to 2105 feet. Exclusive of about 155 feet in the region extending from 302 to 318 and east of those points, it was all done in an endeavor to pick up the Victor vein on the 300 foot level.

Beginning at a point 35 feet northeast of the point marked 302, all of the work southwest of that point was done in an endeavor to find the downward extension of the Victor vein on the 300 foot level. In fact, everything on that map southeast of the point just mentioned.

The witness stated that he just then made some markings on the map. It had been outlined and he was making the line heavier. The survey had all been completed and was put in pencil and then color. It has been surveyed but it has not been colored in.

Mr. Thatcher then asked if there had been any ore taken out of the workings on the 300 foot level south of the shaft. Mr. Gordon answered that considerable ore was taken out in the Penelas vein, south of the shaft; that there were ore shoots beginning at a point a little north of 302 and extending from there over to the extremity of those ore shoots. In the Penelas vein south of the shaft the length of the Penelas ore shoot was about 50 feet; this being on the 300 foot level south of the shaft.

(Testimony of L. D. Gordon.)

Mr. Rowson then asked Mr. Gordon to proceed with the 400 foot level.

Mr. Gordon then testified that the 400 foot level is marked in yellow. Beginning at a point about 15 feet north of a point marked 1058 on the map in yellow there is a shoot of ore on the Penelas vein approximately 50 feet long, except that at a [107] point above a point marked 1065 and about 50 feet above that point, the ore shoot extends still further north, in fact, 60 feet. In other words, the ore shoot seemed to take the position of an inverted "L" from the 400 foot level up. On the level there was a little over 50 feet of ore, which extended all the way through to the 300 level. Then up above that level about 50 feet the ore shoot extends out laterally 60 feet at a point about 50 feet below the 300 level. In other words, there was a block of ore below the 300 level 60 feet long and about 50 feet high that did not show very much on the 400 level. At a point about 10 feet south of a point marked 1076 another shoot of ore was opened on the 400 level. At a point about 15 feet north of a point on the map marked 406 there was another ore shoot on the 400 level about 30 feet long. That extended all the way to the 300 level. At a point approximately 65 feet north of the point 406 there was encountered another ore shoot. That was about 50 feet long and extended to the 300 level. Beyond the north end of that ore shoot the drift was extended approximately 155 feet. The cross-cut east was extended from a point marked

(Testimony of L. D. Gordon.)

409 about 30 feet. The foot-wall was hit but no ore worth while was encountered. In the stope that began 15 feet north of 406 and about 65 feet north of point 406, the ore body was quite wide. As much as 12 or 13 feet and considerable of the production in November, 1937 came from these two stopes. Not all of it, but quite a portion of it. The last shoots mentioned on the 400 foot level were in the Penelas vein. The shoots mentioned as being 15 feet north of 406 and 65 feet north of 406 went practically to the 300 foot level but on that level those two shoots were not pay ore.

Beginning at a point approximately feet south of a point marked 1058 on the 400 foot level a shoot was opened in the [108] Penelas vein about 50 feet long that was stoped through to the 300 foot level. That shoot came in about 15 feet south of a point 1058 and extended south 50 feet from there on the Penelas vein. Then a drift was driven south from the south shoot at that point about 47 feet on the Penelas vein without encountering any additional commercial ore. From a point about 35 feet northeast of a point marked 401, which is just a little southwest of where the 300 foot level crosses the 400 foot level on the map, all of that work was done in an endeavor to pick up the downward extension of the Victor ore body on the 400 foot level.

On the 400 foot level, roughly speaking, there was a downward extension of 460 feet that was solely designed to pick up the Victor vein. Gordon would

(Testimony of L. D. Gordon.)

not say they found the extension of the Victor vein. The Victor vein occurred in very plastic formation. There was very little to go by and there were a great many slips. Any one of those slips conceivably might have been what was the Victor vein but nothing was found on the 300 level or nothing on the 400. They did get a little ore on the 300 but did not get any on the 400. The Victor and Penelas veins are entirely different types.

Referring to the 300 foot level, the one marked red, a cross-cut was extended a little north of east 230 feet from a point marked 1062 on the 300 foot level. At that point the sheer zone was encountered in the rhyolite that carried values which were previously testified to. That is an unnamed vein. The cross-cut a little south of east of that point was extended. It is not all on the map, but it goes on about 150 feet beyond that point to the southeast. On this sheeted zone in rhyolite, a drift was driven north about 140 feet and south about 45 feet. It has been surveyed but is not inked in. The extension to the [109] north, to a point about 40 feet north of a point marked 322 a drift has been extended 100 feet north, and from point 322 a drift has been extended 45 feet south. Samples were secured in both drifts but the south drift looked more promising; the sheeting is much better defined and now gold can be panned from those various fractures and assays obtained there. Drifting south is lessening the chances to encounter ore shoots in the unnamed

(Testimony of L. D. Gordon.)

vein in the region where the ore shoots occur in the Penelas vein. The total extent of the work that was done on the 300 foot level to the east, all lateral work, was 230, 140, 45, 50 120, 100. 150 feet of the work does not show on the map. It was pasted on but since then has become detached, probably when it was wrapped up. All this makes a total of 685 feet on the 300 foot level.

The 400 foot level has been covered completely.

The 500 foot level is not colored on the map but is marked in pencil. From a point where east and west coordinate, line 6200 crosses the 500 foot level to a point 75 feet south and about 35 feet north, there is a shoot of ore on the Penelas vein that is 110 feet long. At a point 55 feet north of chute No. 3, north of the shaft, there was encountered another shoot of ore which is about 20 to 25 feet long, then there is apparently a gap of low-grade ore for about 12 feet, and then there was another shoot of ore about 25 feet long. About 40 feet north of the north end of the last mentioned ore shoot, there was another shoot not very long, but with good width, about 25 feet long. About 40 feet north of the north end of the last mentioned ore shoot there was another one, which is 50 feet long. It is not known where the foot-wall of the 50 foot shoot and the first one south of it is. It had not been cross-cut, but the drift in [110] places is over 6 feet wide back from the hanging wall with the foot-wall not in sight.

The foregoing covers the work on the 500 foot level to date. Drifting is being done north on the

(Testimony of L. D. Gordon.)

500 level but not south at the present time. Gordon thought they had reached the southern extremity of the vein, and there were no ore shoots in the Penelas vein on the level above, south of where this opens. It might be advisable later to drift south after more is known about the 500 foot level.

The 600 foot level is marked in pencil. The shaft has reached the 600 foot level. There was ore in the south drift on that level but in Gordon's opinion there had been reached, or they were rapidly reaching, the northern extremity of that particular shoot. They had done nothing to open additional ore shoots. The particular ore shoot referred to is now longer on the 600 level than it was on the level above and the northern extremity of that particular shoot north has about been reached, but there was still ore south. There are other shoots opened on the 500 level north of the present north face of the 500 yet to be opened on the 600 level. They have opened commercial ore for approximately 160 feet. A compilation of all the car samples and all muck pile samples, for a length of 110 feet shows values of \$23.60 average on the 600. From developments on the 600 foot level, the enrichment extends over a greater width; the values are higher; the formation is very favorable and there is a well defined vein and that vein could extend and carry those values for several hundred feet below the 600 foot level. The 500 foot level was better than the 400, and the 600, so far, is better than the 500. The width of the

(Testimony of L. D. Gordon.)

ore body on the 600 foot level averages around 6 feet and on the 500 foot level the width is [111] about four feet. The witness then stated that this mine, like any mine, to be preserved as a valuable producing property, must be operated carefully, and it is true that only a small part of the debtor's mineral estate has been explored. In addition to this sheeted zone ore body that has been opened in the east cross-cut on the 300 foot level, there has been found a new vein in the foot-wall and parallel to the Penelas vein. It has been opened by sinking the shaft. On the 500 foot level that vein was only about a foot wide. On the 600 foot level it is 12 feet wide between well defined walls. We had small assays on the 500 foot level. The break of the shaft at time has gone two and one-half to three, which is a whole lot more than the Penelas vein carried in places between ore shoots. Nothing whatever has been done and there has been no opportunity to do anything whatsoever on this parallel vein in the foot-wall of the Penelas vein. This is a distinct vein from the Penelas.

The new vein appears to apex just about the 500 foot level. That seems to be about the top of it, and in sinking from the 500 to 600 foot it has widened. The shaft has been sunk right on it. The shaft is practically in it and opened right on it. On the 600 foot level, it is 12 feet wide between well defined walls and is parallel. It has about the same strike and dip as the Penelas vein, a very beautiful

(Testimony of L. D. Gordon.)

looking vein, but nothing whatever has been done in the way of drifting as there has been no opportunity to do it. Some work was done about a mile north of the Penelas shaft on a claim known as the Combination Bonanza. There was a showing on the surface of quartz and the typical indications that occur in the district, showing some values over a length of about 200 feet. A cross-cut was driven 250 feet to encounter what was taken to be that vein, and some drifting was done to the [112] south, but not driven far enough south to get under the best showing on the surface. This was new work except for a few little cuts and trenches. This drifting was carried on from a tunnel which was driven in 250 feet before what appeared to be the vein was encountered, and then the cross-cut was carried 50 feet beyond that before starting to drift there. Some values were encountered. The assays ran from \$4.00 to \$5.00 and \$6.00. The vein was not very wide where it was encountered and didn't show very much of a width on the surface. Its greatest width reached on the surface was about 2 feet, but where the Penelas vein comes to the surface it is about 2 inches. The vein was first hit in the neighborhood of something over 100 feet. With the exception of some surface trenching in some places, that would about cover the work on the Combination Bonanza. The workings that are portrayed on the map, Exhibit 1, are on the Leader Extension and some of them extend into the Victor or Victor Extension.

(Testimony of L. D. Gordon.)

Most of them are on the Leader Extension going southwest; some of them cut into either the Victor or Victor Extension, one of these two claims.

From the 100 foot level down to and inclusive of the 600 foot level, there has been done a total of 6744 feet of drifts and cross-cuts. In addition, there is a raise 100 feet long on the 200 foot level. There are 140 feet of raise on the 300 foot level and there are chutes on the 400 foot level totalling 150 feet. The shaft is completed and timbered to the 600 foot level. Tabulated by levels, the work is as follows:

On the 100 foot level, north of the shaft, there are 598 feet of drifts and cross-cuts. On the 100 foot level, south of the shaft, there are 507 feet of drifts and cross-cuts. (At this time the tabulation showing total lateral work by way of drifts [113] and cross-cuts on each of the levels from the 100 down to and including the 600 was offered and admitted in evidence as debtor's Exhibit No. 2).

Referring to the work on the Victor vein, the main reason for doing that work on the 400 before opening ore on the 300 was the insistence of Mr. White, who wanted the gold ore to be considered secondary, and everything possible was done to develop and get rid of the silver ore before the silver purchase act or agreement expired. Ordinarily, ore would be picked up on the one level before going down to pick it up on the level below. In the Penelas vein, the silver content is negligible. It averages probably two and one-half to five ounces to an ounce

(Testimony of L. D. Gordon.)

of gold. In the Victor vein, the proportion was considerably higher in silver; in fact, a lot of that ore averaged from fifteen to thirty or forty ounces in silver. At the time the work was done, the proportion of values of silver and gold in the Victor vein would be about 50-50; in the Penelas vein about 95% of the values are in gold. The proportions of silver to gold seems to be decreasing with depth, while the gold content seems to be increasing with depth as indicated by recent work. Had it not been in an endeavor to do what was suggested, the ore on the 300 would have been opened before doing the work on the 400. Some people might think the course pursued was good mining practice, but the witness' practice has always been to get the ore on one level before trying to get it on a level below.

On the 400 foot level there is 460 feet of work which was done upon Mr. White's statements and letters, not his insistence, and not on the witness's advice and counsel, but on his acquiescence. The witness stated that he wanted to do what he thought Mr. White wished. The cost of that work, computed at \$8.00 a [114] foot, would be about \$3,680.00.

On the Combination Bonanza a cross-cut was run about 250 feet to hit the vein and about 200 feet beyond, and about 200 or 250 feet of drifting was done south of the cross-cut. This was Mr. Gordon's own idea. After hitting the vein, Mr. White suggested that work be stopped and activities be confined to the region of the shaft. Mr. Gordon did not

(Testimony of L. D. Gordon.)

object to quitting the work at that time because no productive ore had been opened and winter was coming. However, he did think that in view of the amount of money that had been spent there that additional work should be done to the south, because he believed that there was an excellent chance of opening ore in that region. However, Mr. White wrote Gordon several letters suggesting that work be confined to the region of the shaft. Gordon did not object to this or disagree because it was entirely exploration work and he did not mind deferring the continuation of that work until a later date. That work was about \$6.00 a foot, being done on contract and the total cost of the work there was \$4,000.00, including a building for the men, a lumber building, a road, a portable compressor, putting that in a galvanized corrugated building and moving over a gasoline engine to run it and the pipe and track and everything moved over will show something less than \$4,000.00 for the whole business.

Mr. Gordon wrote White in May of 1934, telling him that it would cost about \$120,000.00 to develop the property and install a mill. (This was objected to on the ground that the letter itself was the best evidence, the court reserving ruling for the present).

Mr. Gordon, in making his estimate that an extension of three years would suffice in which to pay off the principal in- [115] debtedness, and also interest accrued and interest accruing, to Mr. White, made

(Testimony of L. D. Gordon.)

his estimate on figuring the mill heads of \$15.00. All of the ore on the five and six has been averaging much better than that. An extraction of 90% was allowed, which would leave \$13.50 a ton. The cost in the fiscal year, comprising seven months, most of it in the winter time, exclusive of interest, depreciation and depletion, has been \$8.07 a ton. It is possible to effect sufficient changes to take care of the interest. That will leave a profit of \$5.50 a ton, or about \$7,400.00 a month. If that is maintained, the entire matter could be taken care of in two years or less. However, income taxes are to be considered and other taxes that might be levied. With no unfavorable occurrences, such as a strike or a fire, or something else, two years would probably be sufficient, but Mr. Gordon allowed an extra year as a safety factor.

Ore on the 300 is averaging near \$20.00, and that is what is going through the mill. Figuring assured and potential ore tonnage of 42,730 tons and a net profit of \$5.50 per ton, the net operating profit would be \$234,965.00. It would take a little over two years and a half to mill this amount of tonnage.

Mr. White has no security for his notes, other than a pledge of one-half of Mr. Gordon's stock. In the event the maturity of those promissory notes is extended, as contemplated, Mr. Gordon would be willing to have the company execute a mortgage upon all of the company's properties. He planned on reducing operating costs. Mr. Dynan, whose sal-

(Testimony of L. D. Gordon.)

ary was \$3,600.00 a year, had already been eliminated for something over a month. Mr. Gordon would also eliminate Mr. White's salary, which is \$3,000.00 a year, and would reduce his own salary from \$800.00 to \$600.00 a month. In the last few weeks he had been able to [116] eliminate one man, who had been pumping, which effects a saving of about \$150.00 a month, or \$1,800.00 a year.

In connection with the maintenance of the company office at Fallon, some little saving could be effected by moving the office out to the mine, but it was a question whether it would be the efficient thing to do.

The company has been able to pay all its current bills and doesn't owe any money to anybody except to Mr. White. The company has no bills except the current bills, and has more than enough money available to pay them. The company has paid all bills which were due to creditors other than Mr. White on June 1st. It did not get any order of court for that. Those bills were for supplies, material and labor.

Mr. Gordon signed the Petition for Relief as Vice President and manager of the company. In the petition he had alleged the debtor was in need of rehabilitation and desired to effect a plan of reorganization under the provisions of Section 77B of the Bankruptcy Act. He had also alleged in the petition that unless relief was secured under the provisions of the Corporate Reorganization Act, great loss

(Testimony of L. D. Gordon.)

would result not only to the stockholders, but also to its creditors. If the company were forced to liquidate, it would necessarily result, in his opinion, in a loss to stockholders.

The witness was then asked the following questions, and gave the following answers:

“Q. What about creditors, trade accounts?”

A. Trade accounts?

Q. Yes.

A. Well, that depends on whether we could use the money we have on hand to pay those trade accounts or not. [117]

Q. If you were not able to use the money you had on hand to pay those, if used to liquidate the promissory notes of Mr. White, would it then result to loss to creditors?

Mr. Thatcher: I object. The record shows they have already paid the trade accounts.

The Court: You can answer the approximate amount of those and we will consider the legal effect later.

A. I would like to know just what legally is meant by the term “liquidation.”

Q. Well, liquidation would necessarily follow if suit were brought by Mr. White to force collection of those past due promissory notes, followed by an execution sale against the company’s properties.

A. Well, there certainly would be a big loss, because under an execution sale, which as I

(Testimony of L. D. Gordon.)

understand it is for cash, it would be difficult to have anybody come in there and put up that much cash for the property.

Q. That would involve, of course, a forced sale.

A. That is what I mean.

Q. With all the hazard, taking into consideration all the hazard that would be normally involved in selling the property at a low figure.

Mr. Thatcher: I think the question is suggestive.

Mr. Rowson; I think the last one is; I withdraw that.

Mr. Higgins: I think you might let the witness testify instead of counsel.

A. Some of these questions are legal and I wanted to know what liquidation legally meant, is all.

Q. In the event a forced sale in execution, taking into consideration what you now understand is meant by the [118] word "liquidation", would the company suffer a destructive loss of its rights, equities, property interests, if the property were sold in execution sale?

A. The stockholders certainly would.

Q. What about the company, if this property were sold in execution sale?

A. There wouldn't be any company.

Mr. Gordon was then shown what purported to be the corporate minute book of the Penelas Mining

(Testimony of L. D. Gordon.)

Company and his attention called to pages 1 and 2 entitled "Regular Monthly Meeting of the Directors, Penelas Mining Company", and to the resolutions on pages 1 and 2. He then testified, in substance, that the signatures appearing on page 2, "L. D. Gordon, Chairman" and "Attest Walter Rowson" were the signatures of the persons named. That he was present at a regular meeting of the Penelas Mining Company at which those resolutions were adopted on May 2, 1938. Those resolutions were in fact adopted, at which time the following matters took place:

"Q. Kindly read them and state——

Mr. Thatcher: Let us see them first.

Mr. Rowson: I want the witness himself to read them and identify them as correctly reciting the resolutions that were adopted that date.

Mr. Thatcher: We would like to ask a few questions on voir dire.

Q. (Mr. Thatcher) Do I understand, Mr. Rowson, you will take the stand for the purpose of this identification?

Mr. Rowson: Yes sir.

MR. ROWSON,

being first duly sworn, testified as follows: [119]

Direct Examination

By Mr. Thatcher:

Q. Give your name, Captain.

A. Walter Rowson.

Q. And you are an attorney-at-law?

A. Attorney-at-law; reside in Reno, Nevada, maintain offices in Reno, Tonopah and San Francisco, California.

Q. When did you become secretary of the Penelas Mining Company?

A. May, 1935, as I recall the date. At any rate, from the date of organization of the company.

Q. And ever since that time you have been secretary? A. Yes.

Q. Have you also the by-laws of this corporation?

A. Yes, they are in the record now in your hand.

Q. Are they in this Minute Book, regular Minute Book? A. Yes.

Q. At the time of the organization of the company, as I understand your statement yesterday, you were attorney for both parties, Mr. Gordon and Mr. White?

A. Yes, I acted as counsel for both parties, altho Mr. White also had his own counsel, Mr. Joseph Little, a member of the firm of Tolles, Hogsett & Ginn in Cleveland, Ohio, and all the records, all the

(Testimony of Walter Rowson.)

organization articles, incorporation organization minutes, the by-laws, and all organization records at the time were submitted to Mr. Little; in fact, Mr. Little also came out to Reno and conferred with me and collaborated with me in the preparation.

Q. Were you ever discharged or supplanted as attorney for Mr. White?

A. Well, I rather take it that I was. [120]

Q. Well, do you recall of any occasion when you were discharged or supplanted as attorney for Mr. White?

A. That calls for a rather personal answer, Mr. Thatcher; that is, an answer involving a personality, but if you insist, I will state when I believe I was certainly discharged, so far as any personal relationship as attorney and client are concerned, as between myself and Mr. White.

Q. I would like to have the answer.

The Court: Is there anything important other than the time?

Mr. Thatcher: No, the time.

A. The time? Very well: I don't recall the exact date of Mr. Gordon's last trip to Cleveland—April 20th, I believe.

Mr. Gordon: The last trip was in April.

A. Then I considered I was discharged on or about April 20, 1938, if, in fact, it could be said that I was acting as personal attorney, continued to act as personal attorney of Mr. White following

(Testimony of Walter Rowson.)

the organization of the Penelas Mining Company.

Q. Did you ever notify Mr. White that you considered that your employment or representation of him as attorney in Penelas matters had been terminated?

A. No, I didn't believe it was necessary because, as I say, I don't believe that I acted as personal attorney for Mr. White after the organization of the Penelas Mining Company. I had acted as personal attorney for Mr. White in a reorganization proceeding involving the Seven Troughs Company several years ago—I acted as Mr. White's personal attorney at that time. I don't know of any other item of legal business where I acted as personal attorney for Mr. White, with that exception and excepting only my representation of both Mr. White and Mr. Gordon during the formative period immediately preceding the or- [121] ganization of the Penelas Mining Company in the negotiations between Mr. White and Mr. Gordon that led up to that corporate organization.

Q. Did you prepare the Minutes of what is called here the regular monthly meeting of the Directors of Penelas Mining Company?

A. Yes, I prepared them.

Q. Which appear on the first two pages of this book, which is marked "Penelas Mining Company Organization Records and Minutes"?

A. Yes.

(Testimony of Walter Rowson.)

Q. And that they were typed in your office?

A. Typed in my office by my secretary.

Q. Dictated by you? A. Dictated my me.

Q. And that was on the 2nd day of May, 1938?

A. The end of May, 1938, I think that is the exact date, but my daily journal will show the exact date.

Q. Were you present in Reno on May 2, 1938?

A. Yes.

Q. Was Mr. Gordon present?

A. Mr. Gordon was present in Reno on the 2nd, as I recall.

Q. Do you know whether he was or not?

A. I believe—it is my best recollection he was present on that day, on May 2nd.

Q. Are you sure as to whether or not he was present on May 2, 1938?

A. Well, I would have to look at my daily journal. I have a written record.

Q. You keep a written record?

A. I keep a written record. [122]

Q. Whereabouts? A. In my office.

Q. Will you please produce the record of that day, the 2nd of May, 1938?

A. Yes; that record will show whether Mr. Gordon was actually present on May 2nd. My recollection is that he was. It may have been May 1st or 3rd, somewhere around that date.

Q. He was there somewhere around that date?

(Testimony of Walter Rowson.)

A. He was there May 1st, 2nd or 3rd, around that date. Mr. Gordon himself could probably answer that question definitely as to being present on that particular date.

Q. Was any notice given to Mr. White of this meeting?

A. No, as secretary of the company, I did not consider any notice necessary for a regular meeting.

Q. You knew Mr. White was president?

A. Yes.

Q. You were secretary? A. Yes.

Q. You knew Mr. White owned 50 per cent of the stock of the corporation? A. Yes.

Q. You also knew at that time Mr. White owned, or he and his family owned, an indebtedness in the form of promissory notes, which were about to mature, in the sum of \$140,000? A. Yes.

Q. You knew there was unpaid accrued interest, or to be due on June 1st, of \$19,900 plus, is that right? A. Yes.

Q. And yet you did not think it necessary to give Mr. White notice of a meeting on May 2nd, which had for its purpose the [123] authorizing of a Petition for reorganization of this corporation under 77B?

A. No, I didn't. Inasmuch as this was a regular stated meeting, the by-laws providing that regular meetings should be held the first Monday of each

(Testimony of Walter Rowson.)

month, I did not consider notice was necessary. A special meeting, that would be necessary.

Q. Was it discussed between you and Mr. Gordon as to whether you should give Mr. White notice?

A. No, it was not even discussed, as far as I recall.

Q. You just held the meeting and gave no notice?

A. Correct.

Q. And you did that on the ground and theory he wasn't legally entitled to notice of a regular monthly meeting?

A. That is right.

Q. You didn't consider his equities at that time?

A. I considered, if I considered it at all, I would have to consider it would have been an idle gesture, inasmuch as Mr. White was in Cleveland, Ohio; it would have been an idle gesture to have given him notice of a regular meeting to be held on that date, or give any notice of the purpose of the meeting, inasmuch as at that time Mr. White had already retained counsel, had made demand for payments of the company's past due promissory notes and interest and evidenced in that way, and also by cessation of his correspondence with me, and also by the fact that he had made the personal remarks to which I referred recently, and which I will give if you wish them——

Mr. Thatcher: You can give anything you want to, Captain.

(Testimony of Walter Rowson.)

A. —that Mr. White's interests were antagonistic to those of the company, that Mr. White, in any event, would not have attended the regular meeting had he been notified. [124]

Q. Because of some personal remark made by Mr. White also actuated you in failure to give him any notice of this meeting, is that correct?

A. No, that didn't actuate me at all. I was actuated primarily probably by the fact that the by-laws provide for holding of a regular monthly meeting on the first Monday of the month and that no notice was required for a regular meeting.

Q. You are more familiar with the by-laws than I am; is any hour set in the by-laws when the meeting shall be held? A. No, no hour at all.

Q. It might be any place between one minute after twelve to——

A. Simply, as I recall, the meeting should be held on the first Monday of the month. I don't think any hour is stated.

Q. Will you please find for me the provision in the by-laws which deals with the matter that you call regular monthly meetings of this corporation?

A. Section 5, page 3.

Q. Section 5, page 3?

A. Yes, of Article III.

Q. That reads as follows, does it not, Captain: "Section 5. The Board of Directors shall meet on the first Monday of every month at the office in

(Testimony of Walter Rowson.)

Reno, Nevada, or whenever called together by the President upon notice given to each Director as hereinafter specified. On written request of any Director, the Secretary shall call a special meeting of the Board. At all meetings of the Directors a majority shall constitute a quorum for the transaction of business"; is that correct? A. Yes.

Q. And was it, and is it your construction, that no notice was required of any meeting of the Board of Directors held on the [125] first Monday of every month?

A. It was and is my construction of that by-law.

Q. And in holding this meeting on the 2nd of May, you relied upon that construction, is that correct? A. Yes.

Q. Did you ever hold any other meeting of the Board of Directors of this company on any such regular, so-called regular, monthly meeting day?

Mr. Rowson: I step down from the witness stand as a witness for a moment, and reassuming my place as counsel, I object as being wholly irrelevant, incompetent and immaterial. We are concerned only with the particular meeting at which this resolution was authorized and any question as to whether or not other meetings were held, would have no bearing at all and could not affect the legality of this meeting.

Mr. Thatcher: It simply shows the good faith——

(Testimony of Walter Rowson.)

The Court: The Minutes would be the best evidence. If you recall, I see no reason why you shouldn't answer.

A. As far as I know, there were no other regular meetings.

Q. I show you Minute Book so you may check your testimony and state it from the record.

The Court: We will take a recess at this time.

(Recess taken at 11:00 o'clock.)

11:15

MR. ROWSON

resumed the witness stand on further questioning by Mr. Thatcher.

Q. After an examination of the Minute Book, do you find any so-called regular meeting of the Penelas Company of the Board of Directors was ever held except this one on May 2, 1938?

A. No other regular meeting. [126]

Q. After this meeting was held, did you ever advise Mr. White that this meeting had been held and of the resolutions purported to be adopted?

A. No, I didn't. I might add, by way of explanation, the reason why. In view of the demands made by Mr. White, knowing his interests were antagonistic to those of the company and realizing the necessity of holding the resolution, the effect of the resolution in abeyance as long as possible, so as to not disturb or adversely affect the negotiations which were then going forward between Mr. White

(Testimony of Walter Rowson.)

and the company, with a view to amicably settling the controversy without resort to a proceeding for relief, I did not so advise him.

Q. Then your failure to so advise him was deliberate, not unintentional?

A. My failure to so advise him was deliberate and intentional, yes, acting as attorney for the company. I considered that if Mr. White or his attorney believed that we had in mind resorting to Petition for Relief, it might, as I have said, adversely affect negotiations which were going forward, with a view to settling the controversy without resort to court. I might add in that respect also that my position with the Penelas Mining Company—and I think in fairness to myself I should be permitted to make this explanation—

Mr. Thatcher: Make any explanation you desire.

A. —my position has been not merely dual capacity, but a triune capacity, if you might call it that. As I stated, I have acted as attorney for Mr. White in the corporate reorganization matter involving Seven Troughs several years ago, some two or three years prior to the incorporation of the Penelas Mining Company. That was the only time, as I recall, I acted as Mr. [127] White's personal attorney. I acted as attorney for both Mr. White and Mr. Gordon in negotiations leading up to the organization of the Penelas Mining Company. At their request, and against my own desire, I con-

(Testimony of Walter Rowson.)

sented to serve on the Board of Directors, and also at their request, and much less to my desire, to act as secretary, because I am not in the habit of serving on directorates and less of assuming secretarial duties, so I was in the position of having acted as personal attorney during the organization negotiations between Mr. White and Mr. Gordon. I was in the position also of acting as director and secretary and also acted as attorney. Following the organization, I continued to act as attorney for the company. I have endeavored to make it plain to both Mr. White and Mr. Gordon, and my correspondence with Mr. White will so show, that my efforts, so far as the company is concerned, will be governed only by my own conscientious ideas as to what my duty was. So far as acting in personal capacity as personal counsel for either Mr. Gordon or Mr. White, I couldn't do that, because I was attorney for the company and the company would come first.

Q. Of course, you knew at all times that Mr. White was president of this corporation and director of it and owned half of the stock of the company, that he had pledged to him an additional 25 per cent of the stock and that he owned practically all of the debts of the company?

A. I have already so testified; that is true.

Q. I call your attention to these Minutes, on page 1 of the purported regular monthly meeting of the directors, and to that provision which is as follows in the resolution:

(Testimony of Walter Rowson.)

“Resolved: That the form of Petition under said Section 77B presented to this meeting be and the same hereby is approved and adopted in all respects, [128] and that the President or Secretary of this corporation be, and hereby are authorized and directed, for and in behalf of this corporation and in its corporate name, to execute and verify a Petition substantially in such form and to cause the same to be filed with the United States District Court for the District of Nevada.”

Is there attached to the Minutes any form of Petition?

Mr. Rowson: By the way, may I make a correction there in your reading, Mr. Thatcher?

Mr. Thatcher: Certainly.

Mr. Rowson: You said that the “President or Secretary”; it is “Vice-President or Secretary.”

A. No, there is not attached a form. I have the form tho. I will tell you what became of that.

Q. Have you it with you in court?

A. No. I ran out of forms to supply you with an extra copy, Mr. Thatcher. I supplied you with two copies and the clerk required two copies and if I remember correctly, I supplied you one or two copies at the time I filed this; altho it was not absolutely necessary, as a matter of courtesy I did it and that was the form originally attached to the Minutes.

(Testimony of Walter Rowson.)

Q. I call your attention to the petition for debtor's relief which was filed in this court on June 1, 1938, at 12:25 P. M. A. Yes.

Q. That is the original of the petition, is that correct?

A. It is the original, except that these figures were changed. May I say this, that at the time it was prepared, the draft of the form was prepared by me upon the day of Mr. Gordon's return from his last conference with Mr. White in Cleveland, which I believe was April 20th. Mr. Gordon wired me to the effect that their conference availed nothing and I immediately began to pre- [129] pare my plans for the protection of the company and provide a form of petition. I procured the figures from the bookkeeper at that time as to assets and liabilities and with the exception of changes in those figures, in view of the fact it was not filed until later, that is the form.

Q. Then the form of the petition, the first draft for it was prepared after you received a wire from Mr. Gordon in Cleveland?

A. The draft was prepared, yes.

Q. That is the first draft? A. Yes.

Q. And that wasn't the final form which you have filed here?

A. Yes, substantially the same form. As I say, the only differences were that inasmuch as there had been a lapse of almost a month by the time the

(Testimony of Walter Rowson.)

petition was filed, I had to change the figures setting up the assets and liabilities, brought them up to date.

Q. The time you prepared that was the time of Mr. Gordon's last visit to Cleveland?

A. I drafted it, yes.

Q. That is when you prepared your first draft for this petition?

A. Yes, with the expectation of presenting it at the regular meeting of directors.

Q. And that was while Mr. Gordon was in Cleveland on his last visit to Cleveland for a conference with Mr. White? A. Yes.

Q. Do you know when—and that date is definite in your mind? A. April 20th.

Q. No, I say the time—was the time when you received a wire from Mr. Gordon?

A. Yes, I think the date was April 20th, as I recall. [130]

Q. But you do know that you drafted it as a result of a wire that you received from Mr. Gordon? A. Yes.

Q. You are sure of that?

A. I am sure of that, yes. I am sure of it.

Q. Mr. Gordon was not at Cleveland, so far as you know, at any time after that occasion?

A. As far as I know he was not.

Q. And that was the first draft of this petition which you ever prepared?

A. The first that I ever prepared, that is right. I might add that I informed Mr. White's attorney,

(Testimony of Walter Rowson.)

Mr. Joe Little, when he was out here—he was here in Reno a few days before Mr. Gordon went to Cleveland—I informed Mr. Little of the fact that unless an amicable arrangement could be concluded between these two stockholders, Mr. White and Mr. Gordon, that I would consider advising resort to the corporate reorganization act.

Q. When Mr. Little was here, you had not at that time prepared any draft of the petition?

A. No, I had not.

Q. You had merely considered a possibility?

A. Merely considered and discussed it with him; told him I wanted to be very frank about the matter. I didn't figure the company was sunk, that it had available means to which it could resort and mentioned to him specifically 77B of the Corporate Reorganization Act.

Q. However, at that time you had not prepared any draft of a petition. A. No.

Q. And no meeting had been held authorizing it?

A. No. [131]

Mr. Thatcher: I think that concludes my examination of Captain Rowson. If he desires to cross-examine himself——

Mr. Rowson: No cross-examination, Your Honor.

There is an offer before your Honor of the two resolutions authorizing the filing of Petition for Relief, to which offer an objection was interposed

(Testimony of Walter Rowson.)

by counsel, and we ask leave to substitute a copy of it, and inasmuch as there is a certified copy of the resolution attached to the Petition for Relief, we ask leave to substitute that particular copy.

Mr. Thatcher: If the Court please, I want the Minutes of the whole meeting in and then they can substitute a copy if they want to.

Mr. Rowson: The Minutes of the entire meeting?

Mr. Thatcher: Yes.

Mr. Rowson: Very well, we have no objection.

Mr. Thatcher: It can be read into the record.

Mr. Rowson: We have no objection to the admission of the entire Minutes, altho I do believe certain portions are irrelevant. The only portions that could really affect this hearing are the resolutions authorizing the filing. I think it is encumbering the record to put that all in and causing us extra trouble to make a copy, in addition to copy of the resolutions.

Mr. Thatcher: It is perfectly agreeable that you read that right into the record. I agree that the court reporter may copy it into the record and return the minutes to you.

The Court: The Minutes does not show copy of the resolution. As I understand the resolution attached to the original Petition, according to your testimony, is the same with possible exception of some change in the figures. [132]

(Testimony of Walter Rowson.)

Mr. Rowson: No change in the figures. There are no figures in the resolutions at all. The resolutions that affect this matter before your Honor are complete. There are two resolutions, merely authorizing filing of Petition for Relief, and those are complete. A certified copy of those resolutions is attached to the Petition for Relief.

* * * * *

(Minutes of meeting of May 2, 1938 as copied)

Regular Monthly Meeting of the Directors
Penelas Mining Company.

A regular monthly meeting of the directors of Penelas Mining Company, a Nevada corporation, was held at the office of the company, Reno, Nevada, on Monday, the 2nd day of May, 1938, in manner prescribed by the company's By-Laws.

Present: L. D. Gordon and Walter Rowson, constituting a quorum for the transaction of business.

The subject of this company's past due indebtedness to R. H. White and Katherine King White, having been discussed by the directors, and it appearing that on April 11th, 1938, demand was made on the company through the First National Bank of Nevada for payment of the sum of One Hundred and Two Thousand Dollars (\$102,000.00) evidenced by this company's promissory notes to said R. H. White and Katherine King White, and that subse-

(Testimony of Walter Rowson.)

quent correspondence between this company's Secretary and counsel for Mr. White indicates that the company is threatened with litigation, and the directors being fully advised [133] in the premises, upon motion duly made and seconded, it is unanimously—

Resolved, that in the judgment of the Board of Directors it is desirable and for the best interests of Penelas Mining Company, its stockholders and creditors, that a Petition for the reorganization of this corporation be filed under the provisions of Section 77B of the Federal Bankruptcy Act, as amended; and further

Resolved, that the form of Petition under said Section 77B presented to this meeting be and the same hereby is approved and adopted in all respects, and that the Vice-President or Secretary of this corporation be, and hereby are authorized and directed, for and in behalf of this corporation and in its corporate name, to execute and verify a Petition substantially in such form and to cause the same to be filed with the United States District Court for the District of Nevada; and further

Resolved, that the officers of this corporation be and they hereby are authorized to execute and file all petitions, schedules, lists and other papers, and to take any and all other action, that they may deem necessary or proper in con-

(Testimony of Walter Rowson.)

nection with said proceeding under Section 77B; and further

Resolved, that for the purpose of conserving this company's treasury funds and maintaining their availability for operating expenses and current payrolls, the Vice-President and Manager be, and he hereby is authorized and empowered to withdraw all of said treasury funds from this company's authorized depository, Crocker First National Bank, San Francisco, California, and hold the same for the account of this company at such place or places within or without the State of Nevada as may be advised, pending final adjustment or determination of the potential litigation confronting this company; and further

Resolved, that Farmers & Merchants National Bank of Eureka, Eureka, Nevada, be, and said banking house is hereby designated as the depository for corporate funds of Penelas Mining Company; and further

Resolved, that all funds of Penelas Mining Company on deposit with said Farmers & Merchants National Bank of Eureka, may be checked out on checks drawn in the name of this company and signed by R. H. White as its President, or by L. D. Gordon as its Vice-President, and countersigned by Walter Rowson as its Secretary, or by Byron James, as its Assistant Secretary; and further

(Testimony of Walter Rowson.)

Resolved, that Penelas Mining Company do retain [134] Walter Rowson, of Reno, Nevada, as its attorney in relation to said proceedings under said Section 77B, and to represent it in any action or proceeding brought against this company either in relation to this company's said past due promissory notes, or in relation to its directors or officers as now constituted, or otherwise, or at all.

There being no further business to come before the Board, the meeting on motion adjourned.

L. D. GORDON,
Chairman.

Attest:
WALTER ROWSON,
Secretary. [135]

MR. L. D. GORDON

then resumed the witness stand and on further examination by Mr. Rowson, testified substantially as follows:

He was present at the directors meeting testified to in the examination of Mr. Rowson. He had taken photographs recently of the plant, camp and main building of the Penelas properties and expected to have the pictures following the noon recess.

He had formerly testified that the option price of the Penelas properties was \$45,000.00. Before

(Testimony of Mr. L. D. Gordon.)

bringing in Mr. White as his partner, he had paid, as he recalled, \$1,500.00 toward the purchase price. At the time the company was organized, Mr. White, to the best of his recollection, had paid \$8,500.00, and subsequent to the organization of the company, Mr. White had paid \$15,000.00, and the company itself paid \$20,000.00.

Shortly after returning from his vacation in July and August of 1937, he received a letter from Mr. White asking him to come to Cleveland to discuss the possibility of a sell out. (The letter, dated November 9, 1937, was identified and then read into the record.) Previous to this letter, he and Mr. White had never had any discussion with reference to a sell out of the Penelas properties. That came out of a clear sky to him and he was surprised. He rather demurred about going back, as he had just returned from his vacation—it might be called a vacation. He was down to a clinic, not necessarily for treatment, but for observation.

Mr. Gordon was then shown a letter dated November 10, and identified the letter as one written by him to Mr. White in response to Mr. White's letter of November 9, 1937. (This letter was introduced in evidence as Debtor's Exhibit No. 3.)

Mr. Gordon resumed testifying and testified substantially [136] as follows:

He went to Cleveland shortly after the writing of that letter to Mr. White. He went back at Mr. White's request, and by plane. The forenoon after

(Testimony of Mr. L. D. Gordon.)

his arrival in Cleveland, Mr. White said he had reason to believe the mine could be sold for a very substantial price. White mentioned at that time a minimum of \$300,000.00, with \$200,000.00 to be paid in cash. He told White that he didn't think the mine was in shape for a sale at that time. White told him that he had discussed the matter with Mr. McDaniel, who had told Mr. White that he thought he could sell the mine for that price. Gordon then stated that McDaniel had not seen the mine for six months, and for that reason perhaps he wasn't as well advised of mine conditions as he might be. Mr. White told Gordon that McDaniel should have a commission of 10% on the first \$200,000.00, and 5% on the balance thereafter. He told White he could see no reason why Mr. McDaniel, or anybody else, should sell the mine. He knew as many people in the mining business that were looking for mines, and if it had to be sold, he could sell it himself, if the mine justified it, and in that way there would be no commission to pay.

The following day Mr. White, Mr. McDaniel and he had lunch at a club in Cleveland. They had a general discussion of mine conditions. They then went to Mr. White's home and went over the maps and again discussed certain underground conditions. White asked McDaniel who the people were he had in mind to sell the mine. Mr. McDaniel produced a couple of letters, one from a man by the name of Skinner, and one from somebody else. The letter

(Testimony of Mr. L. D. Gordon.)

said there would be a chance to sell this mine if it hadn't been "knocked about". "Knocked about", as the witness understood it, meant peddled. Even Mr. White didn't like that [137] term. He told Mr. White he didn't know Mr. Skinner especially well, but had known of him for some twenty-five years, and that he was not a principal. That the last time he knew him he was a floor man for Hayden Stone & Company in New York and endeavored to do promotion on the side. He told Mr. White he thought the whole thing was a mistake, and that if the mine is sold it could be sold direct and that money saved for those who own the property.

Mr. White then told him (Gordon) that he should begin on the first of January to endeavor to sell the mine. If he could not interest somebody then, they would take it up with Mr. McDaniel.

Prior to that, Mr. White had asked him if he could sell his (White's) interest. He told White he did not know. White asked if his brother-in-law wouldn't buy it. He said the man mentioned was no longer his brother-in-law and was not a man of sufficient means to make that sort of an investment. White had asked him if he knew of anybody else who would buy his interest. He told White he did not, right then.

He told White in order to sell the mine it would be necessary to have an option. White said they would not give any option, but in the meantime the price would be \$300,000.00, with \$200,000.00 cash

(Testimony of Mr. L. D. Gordon.)

and the balance to be paid out of a certain proportion of the mine's earnings or certain amount per ton.

That same evening he left to take a plane for the West.

(The following testimony was objected to, but permitted subject to the objection):

On the plane going west he met an old friend named Frank Searles who told him he heard Gordon's partner wanted to sell out; that one Skinner told him. This disturbed him as he always [138] considered White more or less as a partner and he did not think White would make overtures to sell the mine without first having a discussion with him.

He returned to Fallon, arriving there, as he recalled, shortly before Christmas. He wrote White, saying he did not think the mine was in shape for a sale, following his return from Cleveland. (This letter was dated December 8, 1937, and was admitted in evidence as Debtor's Exhibit No. 4.)

White wrote Gordon a letter dated December 6, 1937, in which the starting price of the property was said to be \$500,000. (This letter was admitted in evidence as Debtor's Exhibit No. 5.) That was the result of the conference in Cleveland.

On December 17, 1937, Gordon wrote three letters to Mr. White, all placed in the same registered envelope. (These letters were admitted in evidence as one exhibit, being Debtor's Exhibit No. 6.)

(Testimony of Mr. L. D. Gordon.)

White wrote to Gordon on December 13, 1937, which letter was admitted in evidence as Debtor's Exhibit No. 7. Gordon wrote White on December 15, 1937, which letter was admitted in evidence as Debtor's Exhibit No. 8. White wired Gordon on December 25, 1937, which telegram was admitted in evidence as Debtor's Exhibit No. 9. Gordon wrote White on January 29, 1938, which letter was admitted in evidence as Debtor's Exhibit No. 10. Gordon wired and wrote Mr. White on February 11, 1938, and the telegram and letter were admitted in evidence as Debtor's Exhibit No. 11. White wrote Gordon on February 19, 1938, and this letter was admitted in evidence as Debtor's Exhibit No. 12. Gordon wrote White March 3, 1938, which letter was admitted as Exhibit No. 13. The witness stated that he did not think he received any response to his letter of March 3, 1938. Gordon wrote White [139] on April 4, 1938, which letter was admitted in evidence as Debtor's Exhibit No. 14. Gordon stated there was no letter between March 3rd and April 13, 1938. Gordon wrote White on April 13, 1938, which letter was admitted in evidence as Debtor's Exhibit No. 15.

Gordon then testified in substance that these letters which had been introduced substantially covered all the correspondence with Mr. White following his initial letter of notification that he wished to be in a trading position with a view to a sell out. That after April 13, 1938 he received a letter from

(Testimony of Mr. L. D. Gordon.)

Mr. Little, one of Mr. White's attorneys, stating Mr. White would like an irrevocable proxy in case either of them died.

He went back to Cleveland in April of 1938, and that prior to that he saw Mr. Little in Reno in the latter part of April in connection with the Penelas mine. He went back to Cleveland to see if something could not be worked out without litigation or trouble, and that the trip was unsuccessful; that White had never placed a price on his stock interests in the Penelas Company, despite his endeavors to have White do so, and that White had never offered to purchase his interest in the Penelas Company.

Mr. Rowson stated that was all the examination of Mr. Gordon, with certain exceptions, but he wished to recall Mr. Gordon later as to those matters.

Mr. Thatcher stated he preferred to cross-examine Mr. Gordon after the direct examination was concluded.

Thereupon

MR. BYRON JAMES

was called as a witness on behalf of the debtor, was sworn, and testified substantially as follows:

That he resided in Fallon, Nevada, and was the bookkeeper and assistant secretary of the Penelas Mining Company, and has [140] occupied that position for about two years and nine months. That the

(Testimony of Mr. Byron James.)

corporate books, ledgers, cash books and journals were under his care and control. He was then asked the following questions and gave the following answers: [141]

“Q. Mr. James, I want to call your attention to the Petition for Relief which has been filed by the Penelas Mining Company, particularly to page 2, commencing with page 2, and ask if you will refer to your corporate books and identify the statements that appear in this Petition by the entries that appear in the book, with reference to the assets and liabilities. The first item is item setting up the aggregate book value of the mineral estate as \$183,219.30.

A. Yes.

Q. And the next item on that same page, the mining and milling machinery, milling and reduction plant, equipment, tools, paraphernalia, camp buildings and furnishings, office buildings and furnishings, assay office and miscellaneous installations essential to debtor's operations, and certain water rights and easements appurtenant to said mining claims, of the aggregate book value of \$125,795.50? A. Yes.

Q. Are those figures as they appear in the corporate books?

A. Yes, they are in the books at those figures, but that is the depreciated balance on buildings and machinery and the item, \$183,-

(Testimony of Mr. Byron James.)

219.30 is the balance after a deduction of \$4869.39 for depletion.

Q. (Mr. Thatcher) How much was that depletion?

A. The depletion item is \$4869.39 and that is computed on a percentage basis.

Q. (Mr. Rowson) What percentage basis? What do you mean by that?

A. It is optional with the taxpayer to pay it on a percentage basis or annual set life of the mine and charge off so much each year, but this amounts to 15 per cent of the gross income, pro- [142] viding it doesn't exceed 50 per cent of the net.

Q. Now you say that this item of \$125,795.50 on the mill and all the rest of the equipment there, that that represents the depreciated value?

A. Yes.

Q. What was the original value and what is the amount of depreciation there?

A. The original value is \$159,229.94 and the depreciation which covers two fiscal years; that is the years 1936 and 1937, amounts to \$33,424.44.

Q. By original value you refer to cost price?

A. Cost price. \$159,229.94.

Q. So on that item there has been an allowance for depreciation of \$33,434.44, as of what date?

(Testimony of Mr. Byron James.)

A. May 31, 1938. This \$159,229.94 is the cost price of everything purchased up to the end of May, but the depreciation covers only two fiscal years; that is, up to November 30, 1937.

Q. Does your company operate on a fiscal year basis? A. Yes.

Q. And when does the fiscal year end?

A. November 30th. No depreciation has been figured for the current fiscal year.

Q. Then actually this depreciation of \$33,-434.44 covers a period of what?

A. Two fiscal years; that is, the two operating years. We operated for 10 months with a fiscal year ending November 30, 1936, and then the full 12 months of the following year, and this depreciation covers those two years. I have it here, the amount for each year, if you care for that.

Q. Kindly give us the amount for each year. The amount for [143] the fiscal year 1936 and the fiscal year 1937.

A. \$15,257.51. The year ending November 30, 1937 is \$19,502.74.

Q. Now, Mr. James, if you will kindly refer to the other items, commencing on page 3 with the first item, "Organization expense."

Mr. Thatcher: May I interrupt? Your item of mill machinery, equipment, you have down here, book value \$125,795.50. As a matter of

(Testimony of Mr. Byron James.)

fact, if you figure portion of depreciation since end of your last fiscal year, you would have something less than that? A. Yes.

Q. Probably about \$11,000 less?

A. No, it wouldn't be that much. Some of the items that were included in this depreciation for the previous years were short-lived and they are fully depreciated at the present time, altho we still have the asset, but the depreciation for the past six months of the operating year, I would say it is not much more than \$6,000 or \$7,000.

Q. But it would be something less than this?

A. Yes.

Q. (Mr. Rowson) There is one more item on page 2, "Real estate" \$400. Does that item appear correctly there as shown by your books?

A. Yes.

Q. "Organization expense" on page 3, \$1077.54, is that the correct amount as shown by the books? A. That is correct.

Q. "Inventories, supplies, at cost, \$6,477.12, is it necessary to make any change at this time, as of June 30, 1938, in order to make those figures correspond with the figures shown by your books, inasmuch as this Petition is filed on June 1, 1930? [144]

A. The latest date I can give that for is May 31st.

Q. It would be the same then?

(Testimony of Mr. Byron James.)

A. Well, the thing is our reports come in from the mine several days after that. This was made up before the reports came in, but this is the actual inventory after those reports came in.

Q. What day do you get those reports in?

A. Oh, around the 5th of June.

Mr. Thatcher: It is all right.

Q. There would be very little difference?

A. Very little.

Q. And then this amount, \$6,477.12, is substantially the correct amount as of that date?

A. Yes.

Q. And as of the present date?

A. As of the present date; it would be pretty close to that right now.

Q. Coming to the next amount, "Cash on hand—office funds", is there any change in that small amount, \$7.81?

A. Yes, it is now \$8.11.

Q. "Cash on hand—expense fund (J. L. Dynan)", \$14.99? A. That has been paid.

Q. And is now eliminated?

A. That is eliminated.

Mr. Rowson: We ask leave to amend the Petition by deleting that particular item, cash on hand, J. L. Dynan, inasmuch as there would be a total deduction on that.

A. It is offset in other places.

Q. The next item, "Cash on hand—deposit

(Testimony of Mr. Byron James.)

in Bank”, \$8,640.51, is there any change in that as shown by your books?

A. That is now \$16,572.77, and in addition to that, there is [145] probably deposited today an amount that is due on the last shipment of bullion. It is payment for silver that there is always a week’s delay in collecting.

Q. What would that amount be?

A. That is \$304.05. That might be called a balance of bullion in transit.

Mr. Rowson: We will ask leave to amend, in view of this testimony, so as to conform with the proof, the item of cash on hand, deposit in bank, which appears now in the petition as \$8,640.51, to \$16,572.77.

Mr. Thatcher: We object to that because this statement is supposed to be as of June 1st, the date of the Petition. The deposit of \$16,572.77 is of the present date.

The Court: We will let the proof go in and determine the questions later. We will reserve ruling.

Q. “Iron and slag on hand, estimated, \$547.42, is that item changed?

A. No, that is the same.

Q. “Deposits”, \$777.17?

A. That is now \$779.17, \$2.00 additional.

Q. Let that stand. Just what is this item?

A. Industrial insurance, deposits, etc. and barrel deposits, that sort of thing.

(Testimony of Mr. Byron James.)

Q. "Accounts receivable," any change in that item, \$406.78? A. It is now \$404.52.

Q. Well, that is immaterial, doesn't justify a change. "Prepaid expenses: Operating costs", \$967.35, and "Prepaid insurance," \$557.51, making a total of \$1524.86, any change in those items?

A. Yes; the prepaid insurance is \$456.37; the prepaid operating [146] costs \$1696.22.

Q. Making a total of how much.

A. \$2152.59.

Q. The value of the gold and silver in mill solutions and precipitates, to and including May 26, 1938?

A. Well, that will be changed, of course; it wouldn't be the same as it was on May 26th, but that is the figure as of that date.

Q. And as of this date, June 30, 1938, what is the figure?

A. As of this date—the last exact figure we have on it is for and including June 27th. That is \$5408.42, and the estimate of the mill superintendent for the past two and one-half days would bring that to a total of \$7,000. There is no way to get that exact figure without the report from the mine for the past three days; that is, the 28th, 29th and today.

Q. (Mr. Thatcher) What was the date you said?

(Testimony of Mr. Byron James.)

A. \$5408.43. That is at midnight June 27, 1938.

Q. (Mr. Rowson) Then you said something about \$7,000 as of today, June 30th, it would be approximately \$7,000?

A. Yes, that is estimated, \$1600 accumulated.

Q. Well, under the circumstances, I believe we will allow that figure to stand. Coming now to liabilities, Mr. James, is there any change in the item, "Promissory notes executed to R. H. White," \$140,000?

A. Yes, there is some change—the accrued interest on those notes.

Q. At six per cent per annum I take it will be some change there, inasmuch as that interest was computed up to the time the Petition was filed?

A. Yes, as of June 30th, that is the present date, the—what [147] is the figure?

Q. \$19,978.24. My understanding was it included interest to May 31st.

A. No, these figures were prepared, as I remember, several days before the end of the month and they didn't include some of those items that come up at the end of the month.

Q. Well, we can't do any guess work on it. We will have to find if that interest—

A. Well, it couldn't be, because May 31st it was \$20,678.24.

(Testimony of Mr. Byron James.)

Q. What would it be as of today?

A. As of today there would be an addition of \$700—\$21,378.44. The figures appearing on that were prepared several days before May 31st.

Q. The accounts payable, current trade accounts item, of \$850.13, any change in the status of those items?

A. The current trade accounts payable due on May 31st have all been paid, but of course, during the month of June some have accumulated that we don't have yet. I make up the voucher records at the end of each month.

Q. As far as your books show, that item will remain the same? A. Yes.

Q. Accounts assumed from Wild Rose mine, \$2239.80, any change in that?

A. We have paid \$500 on that since that time.

Q. That would reduce it to \$1739.80?

A. Yes.

Q. The wages payable, any change in that, \$2388.98?

A. Of course that was on June 5th. It will be about the same?

Q. Current payroll for June would be about the same?

A. The payroll runs about the same month to month. [148]

Q. Taxes payable and accrued, any change in that?

(Testimony of Mr. Byron James.)

A. The third installment has been paid.

Q. How much?

A. \$379.79, which leaves a balance of a like amount, the fourth installment.

Q. Then only the fourth installment of \$379.79 remains due on that?

A. That is due the first Monday in August.

Q. The Nevada payroll taxes, have they been changed at all?

A. The accrual to May 31st; this does not include anything for June, is \$453.65. Is that what you have there?

Q. No, \$226.09.

A. That didn't include all of May then.

Q. What was the accrual? A. \$453.65.

Q. Federal payroll taxes, unemployment social security to 7-31-38, not yet due, do those remain the same? They will be increased somewhat? A. What is that?

Q. \$258.07. A. They are now \$427.10.

Q. The State bullion tax?

A. Well, that remains the same in the books, but that will be increased because of a profit for the month of June. The report is made in periods of six months.

Q. You don't know how much that would be increased? A. I haven't any idea.

Q. But as of May 31st that was the amount shown by your books? A. \$152.47.

(Testimony of Mr. Byron James.)

Q. The Federal capital stock tax, \$698.00, that would remain [149] the same?

A. \$698.00 is right.

Q. And the officer's salary, R. H. White, to April 30, 1938, \$5898.58, are you still carrying Mr. White on salary as an officer?

A. Yes.

Q. There will be an increase on that then?

A. If that is to April 30th, we have two months to add to that. It is now as of June 30th, \$6393.58.

Q. What was the original, \$5898.58?

A. Yes, plus two months. There is a deduction of social security tax of one per cent. There is an additional item there I don't believe you have on there.

Q. What is that?

A. There are two of them, in fact. Officer's salary, L. D. Gordon, as of June 30, 1938, \$368.89.

Q. What is the other item?

A. State Industrial insurance, based on the payroll for May 1, \$349.81.

Q. Are there any other items, either under the title of assets or under the title of liabilities that should be included in that list of assets and liabilities set up as of today? A. No."

Mr. James was then cross-examined by Mr. Thatcher. He testified, in substance, as follows:

(Testimony of Mr. Byron James.)

Cross Examination

He paid all bills which were due on June 1st in the matter of trade accounts, salaries and wages, and the like, and by June 13th, he had issued the last check. However, Mr. Gordon's salary was not paid for the previous month. Mr. Gordon had never made a practice of collecting his full salary and would draw a check as [150] he needed it. During the month of June, Gordon drew \$558.45 as he saw fit. During the month of May he drew only \$500.00. At the end of the month there was \$300.00 due him. At the end of May he had a credit of \$127.34 and at the end of this month he had a credit of \$394.91. In substance, he has drawn on his salary for the month of May and part of the month of June.

He stated that all the monthly reports of the company were available from the commencement of operations down to date. Mr. Thatcher then referred to a statement covering expenses for the seven months, October 1, 1937 to April 30, 1938, and he stated that it was prepared by him. (This statement was offered in evidence and admitted as Intervener's Exhibit "A".) This statement was compiled from his books and during that time the total income was \$123,569.40 from the sale of bullion, iron and slag, and iron and slag on hand. The average value per ton of ore was \$11.763, the same being the recovered value or net from the smelter. During that same period the direct mining and milling expenses aggregated \$55,588.98, being \$5.291

(Testimony of Mr. Byron James.)

per ton. This left a gross operating profit of \$6.472 per ton. The development expenses, shaft extension and administrative expenses aggregated \$31,383.77, amounting to \$2.987 per ton. This gave a profit before provision for interest, taxes and other non-operating charges of \$36,596.65, amounting to \$3.485 per ton, then there was a deduction of non-operating charges of interest, travelling, insurance and various taxes. Those were all expenses, but there was a profit realized in the operation of a boarding house and residences which was deducted from that. In other words, it decreased the expense. The total for all those non-operating charges if \$10,471.67, being \$.996 per ton of ore. The insurance, travelling expenses, interest and various taxes are [151] practically fixed charges and will not vary. The profit for direct operations during that period was \$26,124.98, amounting to \$2.489 per ton. The total tons milled during that period were 10,505. No provision was made in that statement for depreciation or depletion. He made these reports of his own volition and that occasionally Mr. Gordon asked him for a report so that he would know what the mine had done for a certain specific period. He did not remember whether Gordon told him to make the present one or not, or whether he did it of his own accord. He was then asked the following questions and gave the following answers:

“Q. That was sent to Mr. White, was it?”

A. It evidently was.

(Testimony of Mr. Byron James.)

Q. Was sent by you?

A. I don't remember this—do you happen to remember this, Mr. Gordon? I don't know whether I did or who did.

Q. Why did you include within that report sent to Mr. White the months of October and November which were in the previous fiscal year?

A. Because it covered a seven months' period. The reason I happened to make this report—I had made one for six months' period beginning October 1, 1937 to March 30th. I saw that October happened to be a fairly good month and so were the following months and I wanted to see what the income would have looked like if it had been that way all the way thru the operations.

Q. It wasn't a six months' period at all, it was seven months?

A. This one is; this is subsequent to the first one I made.

Q. And you made it up so as to put in two good months of October and November? [152]

A. No, I made it up to include the first real good month we had, which was October.

Q. And November was also a good month?

A. November was good, yes sir.

Q. What are the months included?

A. On this seven months' report?

Q. Yes.

(Testimony of Mr. Byron James.)

A. October 1, 1937 to April 30, 1938.

Q. I show you a paper and ask you to refer to your records and state to me whether or not this is a correct statement from your records. You have your annual reports, have you?

A. I have the auditor's annual reports, yes sir.

Q. Suppose you take your 1937 out.

A. '37. The first item on there, the month of May—I don't know if these are segregated month by month. The month of May, 1320 tons of ore milled. Payment by the smelter, \$7.203. It is 20 and 2/10 on that. The operating reports, I have to get them from my reports. They are not segregated from month to month in the annual report.

Q. All right.

A. He happens to have the shipments segregated by the month, but not the profit or the cost.

Q. Just return to the report and see if you can't get that same information from the report. Well, you refer to your own records.

A. Well, we have to take the tons of ore milled and the payment by the smelter per ton, which—

Mr. Thatcher: If the Court please, I think I can save a little time. I think I handed you three papers here, will you check them against your rec-

(Testimony of Mr. Byron James.)

ords and I will let you withdraw and I will go on with Mr. Gordon." [153]

MR. GORDON

resumed the stand on Further Direct Examination by Mr. Rowson. He stated that he had taken photographs of the Penelas property within the last week. He identified a photograph portraying the gallows frame, and mine and mill buildings. This photograph was admitted in evidence as Debtor's Exhibit No. 16. Two further photographs were identified by Mr. Gordon. One showing the mill and building was offered in evidence and admitted as Debtor's Exhibit No. 17. The other, showing the residences at the property, was offered in evidence and admitted as Debtor's Exhibit No. 18.

Mr. Gordon, on

Cross Examination

By Mr. Thatcher:

testified, in substance, as follows:

He had made only one trip to Cleveland in the year 1938, and this was on the so-called "unsuccessful" trip. This trip was made after Mr. Joseph Little was out here discussing the Penelas situation with him and Captain Rowson. He flew to Cleveland and discussed certain matters with Mr. White and his counsel, Mr. Higgins, mostly with Mr. Higgins. Mr. Higgins, Mr. Little and Mr. White were present. At this meeting in Cleveland he was asked

(Testimony of L. D. Gordon.)

to resign, and that an absolutely new man be put in entire charge of the property. It was understood that he was to have absolutely nothing to say in any way about the management and that the new man would report direct to Mr. White. In other words, he (Gordon) was practically to be in the position of a pensioner, inasmuch as he was to be allowed a certain salary, that salary being \$500.00 a month, but there was no assurance whether it would be for two weeks or six months. It was requested that he step down and out, and a new man be employed, but that the word "control" was not mentioned. Also the request was made to him that Mr. White would like to have [154] control of the Board of Directors. Afterwards, either by a letter or at that meeting, it was suggested that Mr. White wished the by-laws amended so as to increase the board. Of his own personal knowledge, he did not know whether previously Mr. White tendered to the corporation for transfer the pledged shares which he (Gordon) had pledged to White under the contract of May 1, 1935, but understood that he did. Of his own knowledge he did not know whether or not subsequently there was an offer or request made to transfer those shares, but also understood that there was. He had been advised by Captain Rowson, secretary of the company, to the effect that that request had been made for such transfer. Rowson also advised him that he (Rowson) had not transferred them and he (Gordon) concurred in that decision. Two demands

(Testimony of L. D. Gordon.)

were made to him, or at least communicated to him, for a transfer of the 37,500 shares of Penelas stock which he had previously pledged to Mr. White, the pledge being made under the contract of May 1, 1935. He and Captain Rowson, previous to those requests, had never discussed the matter of such demand for the transfer. After the first request, he told Captain Rowson as he understood the contract, it was never contemplated that those shares be transferred, the shares being given simply as security and there was no thought at the time they were pledged that they would ever be transferred. That they were additional security for Mr. White, and as he understood the contract there is no time called for and there is no provision made for transferring the stock. He wanted Mr. White to have that stock as security, but it was never contemplated it would be transferred. He and White were supposed to be fifty-fifty owners, and that it was never contemplated that the stock would be transferred at the time the pledge was made. [155]

Thereupon, Mr. Gordon was asked the following questions and gave the following answers:

“Q. So after the first demand was made you did discuss the matter with Captain Rowson, and did you agree at that time you would not transfer the shares?

A. I told him what my understanding of the agreement was. There was no reason for the shares to be transferred.

(Testimony of L. D. Gordon.)

Q. The question is, did you and Captain Rowson agree that you would not transfer those shares?

A. Yes, I told him I thought there was no reason for them to be transferred.

Q. I am not asking for the conversation; I am asking what the agreement was. Subsequent to the first request, did you know a second request was made for the transfer of those shares into the name of Mr. White as pledgee?

A. I was advised of that after demand was made on me but I was advised the demand had been made on Mr. Rowson.

Q. And what did Mr. Rowson advise you that he had done in that regard?

A. He wrote me that he had not transferred the stock—no, as I recall the matter, he sent me a copy of your letter and a copy of his reply. I don't think there was anything else involved. He sent me a copy of your letter.

Q. Well, there was an agreement between you and Captain Rowson you would not transfer those shares to Mr. White on demand?

A. I wouldn't call it an agreement. I felt that they shouldn't be transferred. He was secretary of the company and the attorney for the company and he told me that he felt, under the agreement, that there was no reason for the stock to be transferred. I said I had read the agreement and the understanding [156]

(Testimony of L. D. Gordon.)

was that that stock was never to be transferred to Mr. White. It was simply to be held by him as security.”

Gordon further testified, in substance, as follows:

He concurred in the decision of Rowson not to transfer those shares when demands were made. That his concurrence was largely as a stockholder of the corporation, and not as an officer. That as a stockholder and owner of that stock, and as a matter of protection and his conceived-to-be protection of his own interest, he refused to have the stock transferred. At that time he wasn't thinking about his duties as an officer. That he was referring back to the original contract between Mr. White and himself, and didn't consider that it was his function to decide whether or not it should be transferred. He thought that this was the proper function of the secretary and attorney of the company. He never wrote Rowson any letters instructing or commanding him not to transfer these shares. In refusing to transfer the shares, Rowson was acting as attorney for the company. He never told Rowson he must not transfer those shares. To the best of his recollection the thing had never come up until the first demand was made. Until the first demand was made, he never asked the advice of Rowson as a matter of law whether or not these certificates should be transferred and then did ask him whether or not, in his opinion, the stock should

(Testimony of L. D. Gordon.)

be transferred, and Rowson said "No". He did not know whether, in giving that advice, Rowson was acting as attorney for him, or for the company. He consulted Rowson as attorney for the company and Rowson was the man upon whom the demand was made. Rowson was the secretary of the company and it was up to Rowson to make his decision. He (Gordon) was very seldom in Reno. Rowson wasn't necessary. He (Gordon) had other attorneys who had done the greater part of [157] his work. When asked if Mr. Rowson was his attorney at the present time, Gordon said, "Well, yes and no". "H. R. Cooke has done the greater part of my work for the last thirty years. I have had Morley Griswold do certain things and also had Mr. Rowson do certain things for me. I wouldn't necessarily say that Mr. Rowson was my attorney—one of them, probably." Rowson had done certain things for him at times, but never anything very major. He said Rowson was not acting as his attorney in connection with his interests in the Penelas Company, but as attorney for the Penelas Mining Company. Rowson gave him advice as a lawyer under the contract of May 1, 1935, after he had asked Rowson to give his interpretation of it.

While in Cleveland in 1938, he had wired Rowson, saying: "I have tried everything humanly possible but no luck." Gordon was then asked to produce the telegram that he sent to Captain Rowson at Denver. Then Mr. Thatcher asked leave to read

(Testimony of L. D. Gordon.)

into the record a telegram addressed to L. D. Gordon, c/o United Air Lines, Denver, Colorado, signed by Walter Rowson. It is on a Western Union blank dated May 20, 1938, and reads as follows:

INTERVENER'S EXHIBIT B.

“L. D. Gordon, c/o United Airlines Transport Corp., Westbound Plane arriving Denver 5:48 P. M., Denver, Colorado. Have everything ready file petition Federal Court tomorrow and meet you Reno airport.

WALTER ROWSON.”

This was admitted in evidence as Intervener's Exhibit “B”.

Then the following telegram was read into the records, Western Union blank, dated May 20, 1938, 8:51 A. M.:

INTERVENER'S EXHIBIT C.

“Airport Cleveland Ohio 20 11:30 A. Walter Rowson E. C. Lyon Bldg Reno Nev I have done everything humanly possible but no sale Arrive eleven twenty tonight Please advise Helen

L. D. GORDON”

[158]

This was admitted as Intervener's Exhibit “C”.

Mr. Rowson then asked that his testimony be corrected to the extent that it show that the petition was first drafted May 20th instead of in April. Mr. Thatcher thereupon asked Mr. Rowson how he

(Testimony of L. D. Gordon.)

explained a resolution passed on the second of May which stated that the petition was considered by the Board and how he would reconcile it with the previous testimony of the morning. Rowson said he would have to refer to his journal before correcting the testimony on that point. Gordon then testified, in substance, as follows:

He and Captain Rowson had discussed this matter of putting the company in bankruptcy before he went to Cleveland. Mr. Little was advised when he was in Reno that they would take advantage of that if necessary. Mr. Thatcher then asked "You heard Captain Rowson's testimony before that he did not draft a petition in bankruptcy until after the visit of Mr. Little?" to which question Mr. Rowson objected. Mr. Gordon then stated that he had recently employed Mr. Eric Schrader for the purpose of making a mine examination of the Penelas property, but that no report had been made as yet. Mr. Rowson then stated that Schrader was to be called as a witness and that he expected at that time that Mr. Schrader would have a written report, or rather, a resumé.

Mr. Gordon then resumed the stand.

On further cross-examination by Mr. Thatcher he testified in substance as follows:

That the only ore on the 100 foot level is some broken ore in the stope south of the shaft, there

(Testimony of L. D. Gordon.)

being about 300 tons of broken ore. There is also some low grade broken ore in the stope south of the shaft. The ore in the north stope would run [159] about \$5.00 a ton and on the 100 foot level of the south stope would average between \$6.00 and \$10.00 a ton. On the 200 foot and 300 foot levels, as far as Gordon knows, the ore bodies are exhausted within the limits of those workings and on the 400 foot level there is some broken ore in a stope called "D" stope aggregating approximately 100 tons. On the 500 foot level there are some 1330 tons that are broken and ready to draw, and in addition on that level there are four shoots of ore that are virgin aggregating a length of 110 feet, which Gordon estimated contained 5,500 tons. There have been no raises on the 500 foot level which aggregate about 110 feet. Gordon estimated that the ore bodies on the 500 were 6 feet in width. However, his direct testimony shows that it was four feet in width. Whereupon, Mr. Gordon corrected himself and said that the broken ore averaged 4 feet, and the unbroken will average 6 feet. The 600 foot level had been broken in the drifting about 6 feet wide, for a length of 110 feet north and south. The 600 foot level was reached in the latter part of May or early part of June, and the sinking of the shaft from the 500 to the 600 foot level was started in March. The car sample of the 600 ran \$23.00. Sometimes the mill heads would average higher and sometimes lower. There was not

(Testimony of L. D. Gordon.)

much difference between the car samples in this ore shoot and the Victor vein on the 200 except that the Victor carried more silver. The recoveries in this class, as shown on the 500 and 600, are about 90.%.

He then wished to correct a statement which he made earlier, saying that he thought he confused the 300 and 400 on the Victor; that on the 300 they cut what they thought was the Victor vein, but on the 400 there is no indication of it. There has been no development done below the 600. [160]

Redirect Examination

By Mr. Rowson:

No demand of payment of the notes to Mr. White had ever been made upon him at any time. Nor did anything in Mr. White's letters indicate a demand for payment of those promissory notes. He made an offer to Mr. White looking to an amicable adjustment and the substance of this offer was contained in a wire from Geo. B. Thatcher to Joseph C. Little of Cleveland; the wire being read into the record.

“K50 247 DL Reno Nev 1 11 44 A

Joseph C. Little

Care Tolles Hogsett & Ginn

1759 Union Trust Bldg.

Gordon refuses to sign proxy. Offers following proposition. Principal sum and accrued interest to be evidenced by new installment

(Testimony of L. D. Gordon.)

promissory note payable three thousand dollars per month for four months commencing July first nineteen thirty-eight. Four thousand dollars November first nineteen thirty-eight. Four thousand dollars December first. Five thousand per month each month thereafter until fully paid together with interest at six percent payable monthly. Indebtedness to be secured by mortgage on all corporate assets with right of foreclosure if any installment payment or interest delinquent for two consecutive months. Directors and official personnel as present. Gordon's salary to be reduced to six hundred per month and White's salary eliminated. Offices to be moved from Fallon to mine on September fifteenth. Gordon's pledged stock to be held intact as additional security and in event company delinquent on two consecutive payments Gordon to sign and deliver irrevocable proxy as now presented. Gordon will give White option on his total seventy-five thousand shares for sixty day period at price of fifty thousand dollars. If option not exercised by White then Gordon to have similar option on White's seventy-five thousand shares for period sixty days at same price plus balance of principal indebtedness and accrued interest then due. Rowson indicated if we proceed they will file under seventy-seven B. My opinion they can not ultimately prevail under seventy-seven

(Testimony of L. D. Gordon.)

B but can delay for period anywhere from sixty days to six months. Advise giving definite instructions.

GEO. B. THATCHER."

[161] This offer was the result of a conference between Thatcher, Gordon and Rowson.

At no time did Mr. White ever demand of him that the Gordon stock of 37,500 shares be transferred to White's name. That also since the organization of the Penelas Company in May, 1935, he knew of no personal matter that Mr. Rowson had handled for him as an attorney.

White paid in \$15,000.00 on the purchase of the Penelas property and subsequently the company paid \$20,000.00.

White suggested at the Cleveland conference that Gordon be temporary vice president, but there was no assurance whether that would be for a week, two weeks, or a month. White was not willing to guarantee his employment for six months.

There was no agreement between Mr. Rowson and Gordon that Rowson, as secretary of the company, would not transfer the pledged stock. Rowson advised him that the stock should not be transferred because the notes were not all due and there was no provision made in the contract for the transfer of the stock since Mr. White did not have any ownership of the stock. He and Rowson had discussed the matter of Mr. White agreeing to extend

(Testimony of L. D. Gordon.)

the notes, if necessary, beside the fact that the notes were not all due.

Gordon's salary was allowed to accumulate as much as \$3,000.00 and more because he did not wish to call on Mr. White for any more money that could possibly be avoided, as operations were started in the dead of winter. After the last payment on the property was made by White in May, 1929, all payments were made out of mine production.

The development work, although non-productive, is of value to the general development of the mine because it allows [162] certain areas to be eliminated. As the results are negative in the early stages of a mine, there is a certain amount of exploration to be done. Later on, the work can be confined to more productive areas. From the conditions on the 500 and 600 foot levels, there is every indication that those ore bodies will continue at depth, and also that additional ore bodies can reasonably be expected north. In addition to that there is a new vein on the 300 that looks promising, and there is the vein which has been opened in the foot wall in the Penelas vein on the 500 which shows a width of 12 feet on the 600 and carries some values and looks very important.

Recross Examination

By Mr. Thatcher:

Gordon testified, in substance, as follows:

That he had been advised by Mr. Rowson of the demand of Mr. White for the transfer of 37,500

(Testimony of L. D. Gordon.)

shares; that he had been advised of a demand made by Mr. Thatcher on behalf of Mr. White; that he objected to the transfer, although he did not advise Rowson not to transfer. He had never had any conference with Rowson on this matter, but Rowson advised Gordon that it should not be transferred.

At the conference with Mr. Little, Mr. Little told Rowson that White wanted Gordon to get out. Gordon told Little that he would go back to Cleveland and see White. At that time Little asked Gordon for an irrevocable proxy. He was not given the alternative of either pledging the stock or giving an irrevocable proxy. No proxy was presented to Gordon until he returned from Cleveland, but it was discussed at the time Little was in Reno. Gordon did not recall, but would not say definitely that the transfer of stock was not mentioned. To the best of his memory, [163] the whole thing centered on issuing the irrevocable proxy. The original demand for payment of the promissory notes was made to Mr. Rowson by the First National Bank.

JOHN N. DAVIS

was first duly sworn and testified as follows:

That his residence is the Penelas Mine, Fallon postoffice; that he lives on the Penelas property and has lived in Nevada all his life *firty*-four years, with the exception of six years.

(Testimony of Mr. John N. Davis.)

(He was then examined as to his qualifications, but Mr. Thatcher waived them).

He had been mill superintendent for the Penelas Company about two years and five months, ever since it first opened; that he had been associated with Mr. Chaffin, who had designed the mill prior to the time it was opened. He assisted Chaffin in designing the mill. When the mill first opened in February, 1936, he took charge and has been in charge since. That the ore from the Penelas was very simple ore with no metallurgical difficulties; that the values are erratic, being up one day and down the next, but the average being very fair. The mill is a simple cyanide plant, grinding, classifying all slime, agitation, settling, displacement of solution, and all the mechanics that go with it. Its percentage of extraction is 90%; on gold 95%, but that is reduced by the extraction of the silver. The silver content of the ore is low, being below the milling cost per ton of ore. The ratio of gold to silver in the Penelas is \$9.00 of gold to \$1.00 of silver. It was not economically sound to attempt to extract the greater percentage of silver; that it would increase the milling cost. In other words, to extract 50¢ more out of the silver, it would cost 90¢. He [164] expressed the opinion that the mill was very efficient.

Mr. Thatcher then said that no point would be made of the mechanical or metallurgical performance of the mill operations.

(Testimony of Mr. John N. Davis.)

That since the mill first turned in February, 1936, there has been no noticeable depreciation; that all the plant was new except for one filter. Reduced to dollars and cents, the depreciation was about 10%, but because of its use it is better now than when it was new because the mill is broken in and no more adjustments have to be made and the cost of up-keep and maintenance would be less. There is practically no depreciation on the mill buildings. The power plant has shown no actual depreciation, and is a Diesel plant with a 200 horse power engine. The pumping plant is also under the personal supervision of a master mechanic. He expressed the opinion that there was very little actual depreciation on that.

Cross Examination

By Mr. Thatcher:

When the ores are exhausted there will be a very decided depreciation in the plant, and when second hand mill equipment is sold it does not sell for very much.

Redirect Examination

By Mr. Rowson:

The machinery has more than scrap value. The normal life of a cyanide plant of this type is about thirty years. However, anything can be run indefinitely with proper maintenance. After thirty years, it would be merely scrap value.

(Testimony of Mr. John N. Davis.)

Recross Examination

By Mr. Thatcher:

He did not bring any milling records, but Mr. James had them; that his daily reports were sent to Mr. Gordon and Mr. [165] James compiles them; that they show the head assays, the tails and percentage of recoveries and the chemical consumption. The values are erratic; one day the heads may be 10 and the next day 20. However, the past month the values have been uniform. The tailings assay will remain about the same.

Redirect Examination

By Mr. Rowson:

The average extraction over a long period of time was 90%. The Witness was then asked and answered the following questions:

“Q. Did I understand you to say that the values, your heads, ran from 10 to 20?”

A. Yes——

Q. They vary between those figures?

A. Yes.

Q. And is that what you meant by erratic?

A. Yes.”

JAMES McLAUGHLIN

was first duly sworn and testified, in substance, as follows:

That he resides at the Penelas Mine and is in charge of the mine operations and has been connected with it since 1931.

Mr. Thatcher waived his qualifications.

At present he performs the functions of mine foreman and shift boss and also did underground work. In 1931, in addition to himself, there were from two to five men working for a period of about six months.

(It was then stipulated by the respective counsel that the mine was in very bad condition prior to the partnership. "That the shaft was in bad shape, and they had to climb over the top and wait two or three days after they fired a round of shots before they could muck out, and that a man had to wriggle his way through those so-called drifts, scraping along on his stomach.)

He had sunk a shaft from the 100 foot level to the 600 foot; that it was timbered all the way to the 600 foot level; that the machinery on the property is in his charge and it consists of a 35 horse power gas hoist, of one ton capacity, two semi-portable compressors and a hot head compressor, a drill sharpener and completely equipped [166] blacksmith shop and drills, drilling machines, steel and all the other implements required in mining, mine cars and between five and six thousand feet of [167] track laid throughout the workings also

(Testimony of James McLaughlin.)

about 1500 feet of ventilator pipe, air and water lines in all drifts and cross cuts, about 6000 feet of it in addition to what is in the shaft. That there has been no actual depreciation on the mining plant and equipment and all of the machinery was installed at the same time except one semi-portable compressor which was put in six or eight months after the other. That the buildings are in as good shape as when they were built; that the buildings comprise; Hoist house, blacksmith shop, change room, storeroom, mine office, mechanic's shop, electric shop, milling storeroom and 10 or 12 nice residences for employees. That the values on the upper levels were lower than on the lower. There was some ore between the first and second levels that were a little higher than the general average of the 100 foot level. The Victor stope and the eight and nine shoots between the one and two levels all have average milling values.

(There is no cross examination by Mr. Thatcher).

BYRON JAMES

was then recalled for further

Direct Examination

By Mr. Rowson:

He had prepared a statement for the purpose of showing the results of the operation of the Penelas

(Testimony of Byron James.)

Mining Company for the fiscal year—that is, from December 1, 1937, to May 31, 1938. This statement was then offered in evidence as Debtor's Exhibit No. 19. For the past six months the expenses ran around \$13,000.00 each month, which included the \$700.00 interest. Everything was included except depreciation. The first two shipments of bullion this month aggregated close to \$15,000.00. Mr. Davis' estimate as to the bullion of the mill solution which will be refined into bullion for the balance of the month will bring the total up to at least \$22,000.00, which leaves a net profit for June between \$8,000.00 and \$8,500.00. [168]

Cross Examination

By Mr. Thatcher:

During the month of May, \$1,028.56 was lost. During the month of April, a net profit of \$1,296.24 was made and that during March \$2,814.07 was lost, or 1.885 per ton of ore. During the month of February \$491.85, or .347 per ton of ore was lost. In January there was a profit of \$2,464.75, or 1.537 per ton, there being 1603 tons milled during December. During December there was a net profit of \$5,950.14, or 3.593 per ton of ore. During the month of June, 1500 tons of ore should be milled, or a profit of 5.66 approximately per ton.

Mr. James was then asked the following questions and gave the following answers:

(Testimony of Byron James.)

“Q. In November, 1937, what was the profit per ton of ore? Let me show you this and see if you can get it.

A. Yes, you have my copy. Yes; I do not know where this came from, but it is wrong anyway.

Q. Where is it wrong?

A. The payment by the smelter.

Mr. Rowson: What is this you are referring to?

Mr. Thatcher: I handed him a paper and he said it is wrong.

A. Operating results for the period of May 1, 1937, to April 20, 1938.

Q. What is wrong?

A. The payment by the smelter. Per ton of ore milled you have it here as 16.107, while it should be 18.457. We shipped \$26,302 that month and we milled 1425 tons of ore, and dividing the shipment by the number of tons results in 18.457; and the net profit shown on here is 7.03; should be 9.381. [169]

Q. In your smelter returns, which you show on your monthly report of \$26,302.03 is included a shipment of iron and slag of \$3004.40, isn't that right? A. That is right.

Q. That was an accumulation over a number of months, wasn't it?

A. During two or three, maybe four, months.

(Testimony of Byron James.)

Q. Is the total amount of the returns for that month, as shown by that also the actual results of the operations on ore for that month?

A. Not for that month, but it is—as you have it here, operating results for that period, and it does not include iron and slag.

Q. But it is included in the net below, is it not?

A. It is, but it has to be—when they ship iron and slag, if I have the amount set up which it is almost to the month to month estimate, the exact value of iron and slag on hand, the only thing I can do is to wait until we ship it and then credit it to that month.

Q. I am not objecting to your method particularly, but trying to get at the facts. What was the tonnage for the month of—

A. 1425.

Q. (Mr. Rowson) Month of what?

A. November.

Q. 1425 tons? A. Yes.

The Court: We will take our recess until 1:30.

(Recess taken at 12:08 P. M.)

Afternoon Session

1:38 P. M.

The Court: We will come to order and proceed. [170]

Mr. James resumed the witness stand on further cross examination by Mr. Thatcher.

(Testimony of Byron James.)

Q. We have mislaid the original of the summary which I presented to the witness, but I will present a copy of it. Since the noon recess have you had a chance to check up on the proposed exhibit, Mr. James?

A. Yes; In fact, I checked this up yesterday and the only item we differed on was that the item of the payment by the smelter per ton for the month of November, 1937, you have 16.107 and I have 18.457, and we differ in that I included the iron and slag that was shipped that month and you didn't. This figure represents the payment per ton for bullion shipped that month.

Q. As shown by the actual ore treated during the month? A. Yes.

Q. And my proposed exhibit then is correct, and I have also shown, but not made reference to, the slag and other shipments, that is correct?

A. Yes, that is correct, but the gross receipts is incorrect. You have \$26,301.53; it is 50 cents more than that; it is \$26,302.03.

Q. Will you change that to \$302.03?

Mr. Thatcher: We offer it in evidence, if the Court please, being tabulation summary of operations——

Mr. Rowson: No objections.

Clerk: Intervener's "D".

(Testimony of Byron James.)

Q. I have compiled a summary of operations for the fiscal year ending November 30, 1937, from the annual report, and I have previously handed it to you and I will ask you now whether or not that is correct, your check of that?

A. No, there are several items left out. The value per ton [171] of ore milled, in reference to the iron and slag shipments, is omitted here. The totals are carried down, but the value per ton on iron and slag is omitted for the total values recovered, tons milled and the value per ton. That would have to be added to this figure.

Q. And would that in turn bring the figure up to the value per ton of \$11.305, which is shown below that?

A. That is right.

Q. It is in there then?

A. Everything else on that report is correct.

Q. And that one you mention has been taken into consideration?

A. Down there.

Q. Down below?

A. Yes.

Mr. Thatcher: We offer it in evidence.

Mr. Rowson: We object. It is not taken into consideration on the value per ton.

A. It does down here. This .37 should be added to this and it is taken into consideration in this figure.

(Testimony of Byron James.)

Q. And the lower part of the proposed exhibit, which shows \$11.305 per ton, that is correct? A. That is correct.

Q. And the figures show but in the upper, \$10.928 per ton, is without reference to the values covered by iron and slag? A. Yes.

Q. Iron and slag are shown in the sum of 4035.15? A. No, that is 5927.33.

Mr. Thatcher: We offer this in evidence.

Mr. Rowson: No objection.

Clerk: Exhibit "E". [172]

Q. (Mr. Rowson) Iron and slag come directly from the ore? A. Yes.

Q. Is part of the ore?

A. Yes. The ball mill iron, that is what it is called; the iron is the residue of an accumulation in the ball mill and iron value is in it.

Q. (Mr. Thatcher) And slag is the result of operating when you produce your bullion, is that right? A. Yes.

Q. I have prepared another summary of comparison for Penelas for the fiscal year ending 1936. I previously handed it to you and you have had an opportunity to check it. Will you state whether or not it is correct?

A. I have some notations on there that certain parts of it are incorrect. This report, it is from my records, includes the operating expenses. The amount itself is correct, \$80,609.94, but the cost per ton is incorrect.

(Testimony of Byron James.)

Q. Let us stop right there. The cost per ton is given upon the purported exhibit which I have handed you, 6.507. By you on your report it is what? A. 7.573.

Q. Now will you just check in there and see whether or not the amount is correct or your annual report is correct—just divide the tonnage.

A. Well now we have two tonnage items to take into consideration on this. I remember the incident. The mill was started and operated for the first three months on ore that was brought to the surface during the development stage of the mine. That figure is here. It is 2905 tons, and evidently that has been added—no, you deducted that from your stoping costs.

[173]

Q. No, it had never been added to the stoping cost.

A. Well, it evidently was, because I have a higher cost per ton than you do. I have 7.57; you have 6—

Q. Let us start another way and see if we can make it a little simpler and easier. Will you turn to page four of your report?

Q. (Mr. Rowson) The auditor's report?

A. Yes, the auditor's report.

Q. What year?

A. For the fiscal year ending November 30, 1936.

(Testimony of Byron James.)

Q. (Mr. Thatcher) Page four. Now your operating expenses there are \$80,609.94?

A. Yes.

Q. If you turn to the next page, page five, you find that the total tonnage milled was 12,387.8 tons? A. That is right.

Q. Now if you divide those tons, 12,387.8 into 80,000, you would have the figure which I set down here of 6.507, would you not?

A. Yes.

Q. Seven times twelve would be 84 thousand—over ninety thousand dollars, wouldn't it?

A. That is right, but you have used the wrong tonnage figure. That tonnage figure of 12,387.8 can't be applied to the stoping operations.

Q. No. A. For the first few months.

Q. You are right. Turn now to Page 13, and on page 13 what tons are shown have been stoped during that period from February 1, 1936, to November 30, 1936? A. 9482.

[174]

Q. And the difference between that and 12,387.8 is the ore which was mined previously in development of the property, is that right?

A. That is right.

Q. And that ore was not charged with any cost of mining, was it?

A. No, it shouldn't have been, that is why it wasn't. That ore on the dump was ore that

(Testimony of Byron James.)

was encountered while drifts were being driven, while the mine was under development. The costs there were charged to development, as they should have been, before any costs prior to the time that a mill was in operation has to be capitalized; in other words, it would be charged to development expenses and it so happened that this development work was carried on in the ore which was brought to the surface and that is why it wasn't charged with the stoping cost. It was evidently ore that was encountered in the development stage.

Q. And is that reflected in your total cost of 7.573?

A. That ore isn't considered in that.

Q. It is not considered?

A. No sir. Any work done prior to a time the mill started was charged to development and this is an operating expense. Stopping operations include all mining costs underground subsequent to the first of February, 1936, at the time the mill started, which was after this ore had been brought to the surface.

A. Is the principal part of the exhibit, which shows by months the values recovered, tons milled and value per ton, as shown upon this purported exhibit, correct?

A. I believe it is. I will check it here. I don't have any notations on it. Yes, that is correct.

(Testimony of Byron James.)

Mr. Rowson: By "principal part" you are referring to this portion commencing with February, showing values recovered, down [175] to and ending totals, 135,468.69, 12,387.8 tons and 10,935.00?

Mr. Thatcher: That is right.

A. That is correct down to that point.

Q. Now from your annual report, will you please state to the Court what values were recovered, what your general operating expenses were?

A. Milling and stoping amounted to \$80,-609.94.

Q. (Mr. Rowson) That is for 1936 stoping?

A. That is for the fiscal year ending November 30th. That is stoping and milling.

Q. (Mr. Thatcher) And per ton of ore that amounted to how much? A. \$7.573.

Q. Your operating profit then was how much, in dollars? A. \$54,848.75.

Q. And per ton of ore? A. \$3.362.

Q. That was before general administrative expenses? A. Yes.

Q. What do general administrative expenses amount to? A. \$20,160.46.

Q. And per ton of ore? A. \$1.627.

Q. Dollars? A. Yes.

Q. And your net profit from operations was how much? A. \$34,688.29.

(Testimony of Byron James.)

Q. Per ton of ore?

A. Per ton, \$1.735.

Q. And the other deductions, less income, amounted to how much? A. 8755.57.

[176]

Q. That included interest and taxes and matters of that kind, did it?

A. Everything like that.

Q. And your profit after that deduction and before depreciation and depletion was how much? A. \$25,932.73.

Q. And how much was that per ton of ore?

A. That isn't worked out here, but I think it is on another sheet. No, that isn't worked out per ton.

Q. Slightly over \$2.00 per ton?

A. Well, it wouldn't be that. Here is 34 thousand is only 1.73.

Q. I just said that was wrong. In other words, this report is not correct?

A. Which tonnage do you mean?

Q. I don't know.

A. The stoping tonnage or the tons milled—I think it is important to settle that point.

Q. This is a record of the company, is it?

A. This is a record of the company from the books.

Q. If you divide the whole tonnage, it would be two dollars and something?

A. The total tonnage milled—

(Testimony of Byron James.)

Q. 12,387.8.

A. Well, that would be a little over \$2.00. This figure, the 7.573, represents a combination of stoping operations, the cost of stoping operations, divided by the number of tons of ore mined while the mill operations were divided by the number of tons milled, which is a little different; in fact, it is two thousand tons more, and that is——

Q. Have you an extra copy of your annual report? [177]

A. This is the auditor's report. No, I have only one copy.

Mr. Thatcher: We offer in evidence a copy of the auditor's report. We would like to offer in evidence the 1936 report of examination by Ernst & Ernst, auditors of the company. I would like to offer the two of them; one of 1936.

Clerk: That will be "F".

Mr. Rowson: No objection.

Mr. Thatcher: I offer 1937 separately.

Mr. Rowson: No objection.

Clerk: 1937, "G".

Q. Now, Mr. James, you have something to say?

A. In my testimony this morning about the tons of ore my estimate of the tons of ore to be milled during the month of June, during the recess I referred to the latest mill report I have and I find that the tonnage for the first

(Testimony of Byron James.)

27 days amounted to 1188 and Mr. Davis estimated that there would probably be 40 tons per day for the balance of the month, the three days; in other words, which will make a total for the month of 1308 tons and that is almost 200 tons less than the figure named in my previous testimony and an increased net profit per ton, or estimated profit.

Q. It does not change your final figures or your estimated profit?

A. Oh no, it has nothing to do with that.

Mr. Rowson: Do you wish to correct your testimony to that extent? A. Yes.

Q. I have here a production record of the company to April 30, 1938, and I call to your attention and ask you whether or not that is correct? If you do not know, will you check it during the recess? [178]

A. That is correct; I made it up.

Q. You made it up? A. Yes sir.

Mr. Thatcher: We offer it in evidence.

Clerk: Intervener's Exhibit "H".

A. Incidentally, I might enlarge on the figures there.

Q. (Mr. Rowson) That is on Exhibit "H", the production record?

A. Yes, it will have some bearing on that.

Q. (Mr. Thatcher) Can you tell me the total tonnage up to April 30, 1938? Will you put it on the exhibit?

(Testimony of Byron James.)

A. Why, I can't tell it off-hand, but I probably can find it in there. I will add that to it. I have another item on here—the gross value of those shipments is, at \$35 gold and 77 cent silver, altho the smelter, in making payment, based on the basis of 31.94, I think, for the gold, and then a certain deduction for silver, but that has been deducted below there. The smelter deducts for treatment, etc.

Q. It is reflected in the statement?

A. Yes, it is reflected in the statement.

Mr. Thatcher: That is exhibit——

Clerk: Exhibit "H".

Q. I show you table, showing production of Penelas mine by levels and veins, to April 30, 1938, and ask you whether or not you know if this is correct.

A. I didn't compile this, but this final figure on here agrees with the one on that and incidentally, this has your tonnage net.

Q. That will have the tonnage?

A. Yes, 35,997.

Q. (Mr. Rowson) Does that include crude ore shipments too?

A. Yes, everything. Did you want to insert that tonnage on there better? [179]

Mr. Thatcher: No, it is not necessary with this. This tonnage is correct?

A. \$468,502.86; that is correct.

(Testimony of Byron James.)

Q. This statement of the table showing production of the Penelas mine from levels and veins to April 30, 1938, is correct?

A. That final figure is correct because it agrees with the one I have and I would say the entire report is correct.

Mr. Rowson: Well, Mr. James, before we admit that I would like to ask the witness if he will take time to examine this.

A. I didn't compile this.

Mr. Thatcher: We offer it in evidence.

Mr. Rowson: We object to its admission until definitely identified. If Mr. James can't identify it and Mr. Gordon can't—Just a moment—we may be able to withdraw—we withdraw the objection.

The Court: It will be admitted.

Clerk: Intervener's "I".

Mr. Thatcher: That is all."

Redirect Examination

By Mr. Rowson:

At this time a tabulation entitled "Source of Funds and Assets Acquired Penelas Mining Company, June, 1934, to May 1, 1938", which was prepared by Mr. James from the books of the company was admitted in evidence.

He had prepared it within the past month. It was marked Debtor's Exhibit No. 20. The report shows that there were three sources of funds; first,

(Testimony of Byron James.)

an investment by Mr. Gordon and Mr. White of \$48,000.00, which is 19.3% of the total; then, loans from stockholders, Mr. and Mrs. White, amounting to \$140,000.00 [180] and that amount is 56.3% of the total; and, the third item is profit from mining operations without taking into consideration depreciation, depletion and interest. This amounts to \$60,716.33 or 24.4% of the total. The total of funds amounts to \$248,716.33. The \$60,716.33 is the operating profit net after expenses were paid before depreciation and depletion and interest. The interest was not paid and the depreciation and depletion do not involve cash. That is why they were left out. The assets acquired include the mine, mining claims, development work, including the shaft prior to the time the mill started, and water rights and items of that nature; all the buildings, the real estate, machinery, tools and equipment, pipe and power lines and the transportation equipment and tools, trucks and work done on the road and all of the supplies on hand. The total of those assets is \$247,443.51, which leaves an asset balance of \$1,272.82, and there is a reconciliation of that.

Mr. James was then asked the following questions and gave the following answers:

“Q. (Mr. Rowson) Now explain the reconciliation of the balances.

A. The reconciliation of the balances, which is an asset balance—the assets, cash on hand and on deposit, \$3,385.21; bullion in transit,

(Testimony of Byron James.)

\$7,664.41; various deposits, \$779.17; accounts receivable, \$459.51.

Q. (Mr. Thatcher) That is your quick assets, is that right?

Mr. Rowson: Yes, as of that date, June 1st.

A. Well, May 31, 1938.

Q. (Mr. Rowson) This entire compilation is as of May 31, 1938, as I get it?

A. Yes. The report is called "The Source of Funds and Assets Acquired from June 1, 1934, to May 31, 1938." That first date [181] was based on the first advance made by Mr. White. Getting back to that reconciliation; prepaid costs and unexpired portion of notes \$3230.13, which gives us a total net assets of \$20,518.43.

Q. That is the quick assets?

A. Quick assets. The current liabilities, a total of \$19,245.61.

Q. What items does that cover, without giving the figures?

A. That covers vouchers payable and accrued payroll, payroll, taxes and industrial insurance, exclusive of salaries unpaid balance, property, capital stock and deducted poll taxes.

Q. Have you a further reconciliation there?

A. The balance, the liabilities deducted from the assets, \$1272.82.

Q. That is balance deducted from quick assets?

(Testimony of Byron James.)

A. Yes, the current liabilities deducted from the quick assets is \$1272.82.

Q. You have already explained these percentages, source of funds, by percentage, showing percentage of investment by way of loans from stockholders, etc., you have explained that? A. Yes.

Q. Will you go below and explain reconciliation of surplus account operating profit?

A. The book surplus as of May 31, 1938, is \$4171.52, which involves profit for the fiscal year ending November 30, 1936, of \$4560.60 and deficit for the fiscal year ending November 30, 1937, of \$5765.74, and a profit for the current fiscal year; that is, from December 1, 1937, to May 31, 1938, of \$5376.66. The balance of those three figures is \$4171.52.

Q. Those last figures you were reading, Mr. James, they did not come from Exhibit 20—what were you reading from there?

A. I was reading from my monthly reports. [182]

Q. Monthly reports for what month?

A. For the month of May, 1938. That also appears, incidentally, on income and expense account for that same month. I believe that was introduced as an exhibit, wasn't it?

Q. It was, yes.

A. But there is a detail on that exhibit of the surplus account, there is an analysis of it

(Testimony of Byron James.)

and that figure is \$4171.52. The total unpaid interest on May 31, 1938, amounted to \$20,678.24, but \$2,548.64 of that amount accrued before the mill started. In other words, during the development stage of the mine, and was charged to development, so that has nothing to do with the surplus that amount. That leaves a balance of \$18,129.60. Total depreciation for the two fiscal years ending November 30, 1937, was \$33,434.44. Depletion amounted to \$4869.39, and in addition to those items I deducted from these expenses an amount which appears in the books of record for taxes, for which we haven't yet received the assessment notice. It is merely a bookkeeping transaction, so each month can be charged with its portion of taxes accumulating. That is \$658.80. The total of those items, none of which involve cash, is \$57,092.23. That added to the book surplus is \$61,263.75, and from that I have deducted the iron and slag on hand which, as these other items, doesn't involve cash; the iron and slag on hand May 31, 1938, \$547.42, which leaves a balance of \$60,716.33.

Q. What does that balance represent?

A. That balance is, you might say, the cash left after operating——

Q. (Mr. Thatcher) You don't mean cash?

A. Yes, it was in the form of cash once. It is profit after expenses have been paid; I might put it that way. [183]

(Testimony of Byron James.)

Q. (Mr. Rowson) Would be a gross operating profit, would it?

A. It could be considered a gross operating profit before provision for items that don't involve cash. This is a reconciliation of the assets we have with the funds that were provided to buy them.

Q. But also after allowing for depreciation and depletion?

A. No, that doesn't enter into it.

Q. Now will you turn to page 2 of Exhibit 20 and give your explanation of that part of the exhibit?

A. Page 2 of Exhibit 20 is an analysis in greater detail of that item of net profit of \$60,-761.33. The first item on hand, the income items, precipitate shipments, bullion shipments, iron and slag accumulated and on hand, less the iron and slag on hand, amount to \$401,560.65, or 10.779 per ton. I might add at this time that this operating account is dated from the first of February, 1936, at the time the mill started; in other words, since the mill has been operating.

Q. This figure, \$401,560.65 then, would represent gross production on ore tonnage?

A. Yes.

Q. Including the iron and slag?

A. That is right.

Q. Proceed. Doesn't include tails?

(Testimony of Byron James.)

A. No.

Q. It was gross production excluding tails?

A. Yes, the gross shipments; in fact, they are noted here as shipments.

Q. Proceed.

A. From that total I have deducted the smelter charges for all the shipments; that is the small smelting charge, the assaying— [184] we have a representative at the smelter to check the bullion as it is shipped and to check smelter figures. If there is any great difference, the shipment is umpired, of course. Those smelter deductions amount to \$2243.20, or 6.2 cents a ton, which left a total income of \$399,236.45, or 10.717 per ton. The expense, stoping and development operations, during the first two fiscal years, I combined all stoping and development under one head, but during the current fiscal year that has been segregated and that segregation is noted on a foot-note to this report. Did I give you the figure of stoping and development—\$155,603.21. Milling operations, \$106,196.62, or a total of direct operating expenses of \$261,799.83, or \$7.027 per ton. The direct operating expenses deducted from the total income leaves a balance gross operating profit of \$137,436.62, or 3.69 a ton. From that there was deducted administrative costs, as they are in the book, of \$58,848.43, less unassessed

(Testimony of Byron James.)

taxes for the current calendar year of \$658.80, or an administrative cost of \$58,189.63.

Mr. Thatcher: If the Court please, all he is doing is reading from the exhibit in explanation. It is admitted in evidence. I object, if the Court please, to reading the exhibit without re-copying it into the record.

Mr. Rowson: We are not trying to encumber the record, but the exhibit without an explanation would not mean very much; with an explanation it does.

The Court: I presume there has been some explanation going on.

Mr. Rowson: We are practically ended now. The witness is on the last few figures now.

The Court: All right, proceed.

A. From that gross operating profit there has been deducted the [185] administrative cost, the cost of sinking the shaft, non-operating charges, which mean the operation of the power house, whether profit or loss, trucking expenses and other items of income, such as discounts taken, etc. Those items deducted from that gross operating profit leave the amount \$60,716.33, or——

Q. Does that correspond with the amount shown on page one of the exhibit?

A. Yes.

Q. That is how you arrived at that amount on page one?

(Testimony of Byron James.)

A. This is merely an explanation of that figure over there and from that item I have deducted the interest charge, merely as a matter of interest, to see what the profit would be with that expense paid. That would have left a profit of \$42,586.73, or 1.143 per ton.

Q. Before provision for depreciation and depletion?

A. Which do not involve cash.

Q. I notice here you have several red pencil marks, red stars, beside certain of the items. Kindly explain what those are. Just give us the salient features.

A. I had to combine them on this report for the reason, as I stated a few minutes ago, that I hadn't segregated the two operations in the books until the current fiscal year, so I had to combine them for the entire period, but had they run proportionately during those two years, or that is, in the same proportion during those two years, as they have during the current fiscal year, we would have had stoping operations costing \$97,096.40, or 2.606 per ton, and development operations \$58,506.81, or 1.571 per ton. That is merely done there to show what it would have been had the cost been in the same proportion during those first two years, the ratio between development and stoping, as [186] it was during the current fiscal year. The second foot-note "B" is merely an explanation

(Testimony of Byron James.)

of this amount of ore that was on the mine dump when the mill started. The note "C" is an analysis of the administrative costs. I think they are self-explanatory.

Q. You testified this morning, Mr. James, on direct examination that at one time the company, I believe it was in 1936, the company owed Mr. Gordon some three thousand dollars, I believe you said.

A. No, I believe Mr. Gordon testified to that.

Q. That is correct, Mr. Gordon testified to that; pardon me. Have you, during the recess, checked from the books to ascertain what was the largest amount ever owing to Mr. Gordon on salary account?

Mr. Thatcher: It is immaterial.

The Court: I can't see the materiality, but it won't take long to put it in and you can discuss it later.

Q. Did you make a check?

A. Yes, I did.

Q. What was the largest amount?

A. The largest amount owing Mr. Gordon—

Q. What book are you referring to now?

A. This is the company ledger account. As I testified yesterday, I believe it was, I carry Mr. Gordon's accounts and Mr. White's salary accounts as ledger items, liabilities. I credit

(Testimony of Byron James.)

them with salaries and deduct the net payments. The largest amount here owing Mr. Gordon at one time is \$5059.27, on July 31, 1936.

Q. Have you also during the recess, Mr. James, totalled the assets and liabilities of the Penelas Mining Company as of this present date; that is, of yesterday, June 30, 1938?

[187]

A. Yes.

Q. The assets and liabilities as they are itemized on page 2 and 3 of the Petition for Relief?

A. Yes, I have checked them and added them.

Q. Now, there were certain additions to be made, as I understood your testimony yesterday, on the particular items here commencing with inventories, supplies and cost, what is the change there?

A. The new figures are all on here.

Q. That won't appear by amendment. The Petition will stand, of course, with the figures as they were at the time it was filed, but these additions are necessary and I will ask the witness to put them in. It isn't given here. You may take the Petition itself. Commencing with "inventories", what would be the actual figure on the item "inventories" as of June 30, 1938?

A. \$6513.32.

(Testimony of Byron James.)

Q. That will have to be amended as of June 30th.

A. Are you interested in having me read the previous figure here or just the new one?

A. Just the new one.

A. Organization remains the same.

Q. (Mr. Thatcher) The first is inventories?

A. \$6513.32. Cash on hand, office fund, \$8.11. This is out.

Q. (Mr. Rowson) Expense fund, J. L. Dyman.

A. Cash on hand, deposit in banks, \$16,572.77. Balance due on bullion in transit, \$304.05. Iron and slag on hand, estimated, \$547.42. Deposits, \$779.17. Accounts receivable, \$404.52. Prepaid expenses, operating costs, \$1696.22. Prepaid insurance; that is, the unexpired portion, \$456.37, or a total for those two items, \$2152.59. Value of gold and silver in mill solutions and [188] precipitates, to and including June 27, 1938, \$5408.43.

Mr. Thatcher: We had all those figures before, every one of them.

Mr. Rowson: No, we have not, Mr. Thatcher, I am sorry to dispute you. We didn't have them all before, the witness couldn't possibly complete them. We were not able to give them all. You said the record itself would be the best evidence, as I recall, and I promised to have Mr. James furnish the amended request.

(Testimony of Byron James.)

Mr. Thatcher: I never made any such request.

Q. Are there any more to that?

A. The total assets of \$343,182.72.

Q. Did you testify to the changes that are shown here on this copy, the Petition for Relief, have you testified to the changes on liabilities?

A. As I remember, you wrote these down from my testimony. The thing I did not have is the total.

Mr. Rowson: Then I apologize; you are correct.

Q. Will you kindly give total liabilities, showing addition to June 30, 1938?

A. \$167,602.22.

The Court: This is a good time to take a 10 minute recess.

Mr. Rowson: I just want to make the offer and then I am thru. This is to supplement testimony already in. I mentioned this morning I would like to have a written statement in evidence showing not merely amounts paid on the purchase price by Mr. Gordon, Mr. White and the company, but also the dates that those payments were made.

Q. Mr. James, did you prepare tabulations I hand to you here, showing source of payments, how made, dates of payments on the

(Testimony of Byron James.)

purchase price of the Penelas property? [189]

A. Yes, I prepared that.

Q. That is correct and taken from the records of the company? A. Yes.

Mr. Rowson: We offer this as debtor's Exhibit No. 21.

Mr. Thatcher: No objections.

Clerk: Exhibit No. 21.

The Court: We will take a recess of 10 minutes.

(Recess taken at 2:55 P. M.)

3:08 P. M.

Mr. James resumed the witness stand on

Redirect Examination

By Mr. Thatcher:

Q. Under the item, reconciliation of balance, you show your quick assets, that is cash and bullion in transit, etc., of \$20,518.25?

A. Yes sir.

Q. And your current liabilities, \$19,245.61?

A. Yes sir.

Q. A net balance of quick assets of \$1272.82, is that correct? A. That is right.

Q. And that is the period from June 1, 1934, to May 31, 1938, or four years?

A. No, that is the result of operations—well, it would be, it would cover that entire period, yes.

(Testimony of Byron James.)

Q. At the end of that time that is what you had on hand in the way of quick assets?

A. Yes sir.

Q. Now turn to the top of the same page; the investment of Mr. Gordon and Mr. White of \$48,000.

A. Yes sir. [190]

Q. And you received in net from sales of bullion or precipitates, slag, etc., \$399,236.45?

A. That is right.

Q. So after four years' operation you received an investment and monies in to the concern of \$587,000 and you end up with quick assets of \$1272.82, is that correct?

A. Well, it is one way of presenting it.

Q. Well, of course, you have a mine and mill and equipment and machinery?

A. Yes, we have \$6500—

Q. Is that correct?

A. I don't remember the full question now.

(Question repeated.)

A. That is correct. These also might be considered quick assets in the inventory of \$6500 in buildings, machinery, automobiles, trucks; they would be quick assets—

Q. Well, how much would they amount to?

A. \$248,443.51.

Q. That is your equipment, mine, mill equipment, things of that kind, is that right?

A. That is right.

(Testimony of Byron James.)

Q. After four years' operation your balance of quick assets on hand is \$1272.82, that is right?

A. No, I wouldn't say that is right. It is a matter of opinion, what you want to include in what you call quick assets. I would say inventory, supplies on hand could be included in that, or anything that could be liquidated in a hurry. That is what you mean by quick assets.

Q. Would that amount to more than eight thousand dollars? A. Yes. [191]

Q. How much would it amount to, approximately—I don't care exactly.

A. It would be merely a guess on my part. All of these buildings, automobiles, trucks and that sort of thing—there would be a question of how quick they could be liquidated. From that five hundred thousand, whatever that figure is, the expenses were paid too, of course, the operating expenses.

Q. What is the approximate total tonnage which you have milled up to date, up to that date?

A. 37,252 tons; that includes 2808 tons of ore that was on the mine dump before the mill was completed, or before the mill was put into operation. It was low-grade ore, incidentally.

(Testimony of Byron James.)

Q. Your net profit before provision for depreciation and depletion, but after interest—I am talking about book now—is \$42,582.73?

A. Five eighty-six seventy three.

Q. Or 1.143 per ton?

A. That is right.

Mr. Thatcher: That is all.

Redirect Examination

By Mr. Rowson:

Q. In addition to the item you have mentioned as properly quick assets, the inventory of stocks, Mr. James, what about the mill plant itself, would you say that that has a resaleable value? A. I think all of these assets do.

Q. Immediately resaleable?

A. Not necessarily immediately. That is a point I brought out, I don't know how quick it might be.

Q. It might be immediately, might take months? A. Yes.

Q. What is the mill plant carried on your books at? [192]

Mr. Thatcher: That is in the record.

A. The total cost of all the mill buildings, I would have to look up the mill separately.

Mr. Rowson: It is in the record; we will withdraw it.

Q. The same condition would also apply as to the mine itself, would it not?

(Testimony of Byron James.)

A. Yes, if a purchaser could be found.

Q. It might be sold immediately, or might take a little time? A. It might.

Q. It has a recognized value? A. Yes.

Q. Over and above the \$45,000 net amount that was actually paid for it and which was included in this total expenditure Mr. Thatcher mentioned? A. Yes.

Mr. Rowson: That is all.

Mr. Thatcher: That is all.

MR. GORDON

was recalled on further

Cross Examination

By Mr. Thatcher:

and testified as follows:

On April 12, 1938, the shaft from the 400 to the 500 was sunk and timbered. On February 12, the shaft was sunk and timbered to a depth of 60 feet below the 400 foot level, and on May 1st the shaft from the 500 to the 600 was started.

Redirect Examination

By Mr. Rowson:

He had seen Exhibit I of the Intervener, being a statement showing the production of the Penelas Mine by levels and veins, April 30, 1938, but did

(Testimony of L. D. Gordon.)

not have anything to do with its preparation, as that was done by Mr. Dynan, who prepared it at the [193] request of Mr. White during Mr. Gordon's absence in Cleveland. Mr. White made a direct request to Mr. Dynan, who was Mr. Gordon's subordinate. The figures are substantially correct. No request was made of Mr. Gordon for its preparation.

MR. E. J. SCHRADER

was called as a witness on behalf of the Debtor, was duly sworn, and testified as follows: [194]

Direct Examination

By Mr. Rowson:

Q. Kindly state your name and residence.

A. E. J. Schrader, 17 Fordonia Building, Reno.

Q. What is your profession, Mr. Schrader?

A. Consulting engineer.

Mr. Rowson: I assume that counsel will admit the qualifications of Mr. Schrader as a mining engineer, fully qualified?

Mr. Thatcher Certainly.

Mr. Rowson And *thoroly* familiar with mining conditions in Nevada, *thruout* Nevada?

Mr. Thatcher Certainly.

Q. Mr. Schrader, have you visited the Penelas property within the last few days? A. Yes.

(Testimony of Mr. E. J. Schrader.)

Q. When did you go out there?

A. Went out to the Penelas mine last Friday, arrived there shortly before noon and stayed there the rest of Friday and Saturday and Sunday and came in Monday morning.

Q. You spent then how many days out there?

A. Two and one-half days.

Q. Did you go over the mine?

A. Yes, I went thru the mine.

Q. Went over the entire property?

A. Yes, as far as I could within the time limit. No, not the entire property, just the property within the vicinity of the main workings.

Q. Will you proceed, Mr. Schrader, and tell the Court what you found on the Penelas property, in the way of available ores, commencing first with assured ores.

A. The tonnage, you mean? [195]

Q. Yes, and refer to any data you may have for that purpose.

A. Well, of course, I had no time to make a detailed examination and therefore this was in the nature of a preliminary examination and a full examination would have required probably thirty days, so I eliminated any tonnages that might remain above the 400-foot level and made estimates of ore from the appearance of the stopes, appearance of the 500 and 600-foot levels as to what tonnages and what were reasonably assured in the present workings. Therefore, I confine this part to what is known

(Testimony of Mr. E. J. Schrader.)

as the shaft shoot, which is an ore shoot directly opposite the shaft. I gave it that name myself in order to have it clear in my notes, and I figured that between the 600 and 500 that this shoot had about 5,000 tons of ore that could be reasonably expected in stoping, and the north shoot, which is to the north of the shaft on the Penelas vein above the 500-foot level, is about the same length, altho it is not in one piece. Apparently there is a block of ore 30 or 40 feet long and then a little pillar of crushed vein material, which on the level does not carry, and then another stretch of ore, making a total of 110 feet and I figured there was probably another 5,000 tons of ore there. Now that shoot has not been cut on the sixth level. I think the end of the shaft shoot has been reached in the north drift on the sixth level. It narrowed down to about two feet last Sunday and looked to me as if it was coming to an end there and by drifting north they would get under the north shoot, which has been developed on the 500-foot level and if they find the shoot there, why then there would be about another 5,000 tons between the sixth level and the fifth level in that section, but that, of course, is purely probable, because the sixth level hasn't found the ore yet. [196]

Q. Has any drifting been done on the sixth level to the south? A. Oh yes.

Q. About how far?

(Testimony of Mr. E. J. Schrader.)

A. Well, I would have to look in my notebook to get the exact distance there. It is about 55 feet, between 52 and 55 feet, and there was a good exposure of ore in the south face. That was the only face in which I thought the entire width of the vein was exposed, except in the north end, where the vein had narrowed down to two feet, and the width there in the face was 6.4 feet.

Q. (Mr. Thatcher) You mean by "there" in the south drift?

A. Yes, on the face of the south drift; and that was still in ore at the time that I was there.

Q. (Mr. Rowson) And has any drifting been carried on to the north?

A. Well, I spoke about the north drift.

Q. May I ask you to refer to the map there and explain. This pencil sketch is the sixth level. The orange colored lines represent the first level, the 100-foot level; the green, the second; red the third and yellow the fourth, and then in pencil here the fifth level and under that again in pencil the sixth level; so if you wish to refer to that map, Exhibit 1, you may do so. In connection with your testimony as to the ore that has been opened on the sixth level, will you kindly explain that again by reference to the map, Mr. Schrader. I didn't get it very clearly from your testimony.

A. Well, the shaft—here is your incline here, coming down, and what I call the shaft shoot is this exposure of ore here, which apparently—

(Testimony of Mr. E. J. Schrader.)

Q. You are pointing to the 500? [197]

A. Yes, the same thing; it is under that. This is five and this six. They drifted north and had nothing for a short distance, but they got to the end of that shaft shoot shown here, then drifted north and hit ore out here about twenty feet; then about ten feet of what looks like crushed vein matter and some more ore and another blank space and more ore on the end there and that is what I call the north shoot, which has not been cut in the sixth level as yet and which is, of course, a probability.

Q. Has any drifting toward the north been done from the sixth level, and if so, how far?

A. Well, this distance here looks to me about 40 feet. Well, I can give you the distance, I think, from my notebook—fifty feet. I took five samples ten feet apart.

Q. What would you say are the prospects for picking up the ore in drifting on the sixth level?

A. I couldn't see any reason why it shouldn't; in fact, the vein structures there, I would expect that shoot to go to the sixth level and below that.

Q. Are the same geological conditions present on the sixth level as on the fifth, to the north?

A. Yes.

Q. Based upon your experience and your examination, your past experience and your examination of the Penelas property, Mr. Schrader, what can you say, and what would you say, as to the probability of the ore depositions that have been en-

(Testimony of Mr. E. J. Schrader.)

countered on these upper levels, to and including the 600-foot level, continuing downward to greater depth?

A. Well, if I can answer that in my own way——

Q. Yes, answer it in your own way. [198]

A. The Penelas vein is a fault fissure in tertiary rhyolites. Now there are no surface exposures. Apparently, the ore did not go to the surface, which may be caused in part by the fact that the rhyolite is very much silicified north of the shaft along the Penelas vein and that ore is a crushed breccia, which is apparently much softer than the wall rocks, so that with the soil and debris you have no profits. Now, on the upper levels—this is a rather typical deposit in the tertiary places of Nevada—in the upper levels the vein is ragged, the ore occurs in patches, the shoots give the appearance of being very irregular. In Nevada in these sort of deposits usually you encounter two conditions—either find the ore pinches out thru shrinking of the walls, or when you come to the upper levels you find a patch here and there. I have an idea that this is what happened at the Penelas and as you go down your ore shoots on the fifth and sixth get better defined. To discuss the thing further, in the south end of the property where they have what they call the Victor shoot, they have an entirely different condition; have a soft, very tufaceous rhyolite and it is surprising to me they had any ore shoot at all in that country.

(Testimony of Mr. E. J. Schrader.)

Q. That is, an ore shoot of the character of the Victor?

A. Yes. Along the Penelas vein you had not only the fault, which has caused a sheeted condition, so everything is broken into thin layers, but these layers have been almost completely changed to silica and these little sheets, or layers, have been almost changed to silica and have a typical fault hanging wall, a hard, smooth wall, with development of some talc, with considerable striations which are almost straight up and down, and I would say the Penelas vein—I can't see any reason why the Penelas vein shouldn't go down to a thousand feet or more, and [199] in drifting north on it, I see no reason why other ore shoots should not be picked up and I would consider that the present last horizon in the mine is more favorable for additional ore shoots than the upper portions of the vein, where the conditions are very badly broken.

Q. Mr. Schrader, calling your attention to the 500 level, did you find any vein there that apexes on the five hundred?

A. No, I didn't find any, none that apexed on the five hundred.

Q. That did not show on the upper levels?

A. Well, on the six hundred foot level my recollection is that in the foot-wall of the shaft there is apparently a very distinct contact in a broken condition, that I was told contained low values, which possibly might develop an ore shoot if it were drifted on, but there is just that one exposure.

(Testimony of Mr. E. J. Schrader.)

Q. Did you find any vein in the shaft between the 500 and 600-foot levels that apexed on the 500?

A. I don't remember the shaft going down in the bucket in the shaft, whether I seen anything there. I did see this condition in the foot-wall of the shaft which I believe was on the 600, which had a zone six or eight feet wide that was very badly crushed, with a very distinct hanging wall, and certainly I would go on to the 600 level a short distance away from the shaft and drive a cross-cut over there and see whether that continued any length.

Q. Is the vein on the 600-foot level as wide as twelve feet?

A. I didn't measure. It was pretty wide; I would say fully eight feet, but I wouldn't say twelve.

Q. Was the apex of that particular vein on the five hundred?

A. No, I saw no evidence of it on the five hundred.

Q. Did you take assays there, Mr. Schrader?

A. No, I didn't take any assays; I took some samples. [200]

Q. I should say samples. And you took those samples to what extent? How many did you take?

A. I took samples every ten feet on the 600 level. When I went out to the mine I was told to just pay a visit to the property and see whether it looked like a well-operated concern and I didn't have any intention of sampling because I knew I

(Testimony of Mr. E. J. Schrader.)

couldn't sample the entire property, but on Sunday I had a few hours, so I took a miner underground and cut ten samples on the 600.

Q. Did you have those samples assayed?

A. Yes, here in Reno.

Q. By whom? A. By Mr. Eaton.

Q. Were the samples in your possession from the time you cut them until they were delivered to the assayer?

A. Well, not entirely so. I locked them in the trunk on the car.

Q. Have you the assay returns from those samples?

A. Yes, there is the assay certificate.

Q. This was delivered to you by the assayer?

A. Yes.

Mr. Rowson: We offer the assay certificate on the ten samples testified to by the witness. That is debtor's Exhibit 22?

Clerk: No. 22, yes.

The Court: It may be admitted.

Q. Where were those samples taken from, Mr. Schrader, where were they cut? Kindly indicate on the map.

A. They were taken on the sixth level. I started at the south face and took samples across the back, the vein being nearly straight up and down, every ten feet, except at this section here—— [201]

Q. By "here" you mean——

A. At the north face. This section here, the

(Testimony of Mr. E. J. Schrader.)

back was so high that it would have been necessary to build a high staging and to interrupt the milling operations and mining operations, so I took a sample here and then on the other side of the shaft, so I had a wider gap than ten feet.

Q. What was the width of the gap there?

A. I think twenty-five feet.

Q. With that exception, were the cut samples taken every ten feet along the drift?

A. With that exception, yes.

Q. Did you check the mill heads at the property—go into the mill at all?

A. Yes, I went in the mill and spent quite a little time in the mill because I have always been interested in cyaniding, and I found they were keeping very good records, so I took the mill records—

Q. What did you find the mill heads were running and had been running the first 25 days of June?

A. Well, I found the mill heads for the first 25 days in June averaged \$17.45 and the tailings run \$1.81. Now that figure is not absolutely accurate, because I did not have daily tonnages and did not get the weighted average.

Q. Did you compare those mill heads with the assays you took?

A. Well, of course, they contained a lot of material not from the 600-foot level, so were lower than the 600-foot level samples. The ore on the sixth

(Testimony of Mr. E. J. Schrader.)

level averaged \$23.45, I believe. I wrote it on that certificate—\$27.45.

Q. What about muck samples?

A. Well, I went to the mill records and I took the samples [202] that were reported by the shift boss from the time the cross-cut hit the vein on the sixth level and that included the grab samples from the muck piles, the shovel samples from the cars and the skip samples.

Q. About how many samples all told did you take there?

A. The total number of samples was forty-six and the average of those samples was \$23.60.

Q. Was that \$23.60?

A. \$23.60. And that included some very low samples. There was one muck pile sample of \$1.39 and another one of \$1.58.

Q. What would you say as to the mill heads by way of comparison of mill heads values as they usually run?

A. Well, I would expect in the Penelas to get about twenty per cent dilution and therefore, if you have about twenty per cent dilution, the reduction in your mill heads would depend on how much of this dilution broke into quartz blocks so it could be sorted out at the crusher in the stopes and how much crushed and couldn't be sorted out.

Q. I believe some years ago you operated the Gold Circle? A. Yes.

Q. That was in 1928 and 1929? A. Yes.

(Testimony of Mr. E. J. Schrader.)

Q. Taking that as a specific comparison, how would you say that the mill heads of the Penelas property compare with the Gold *Circille*? What were the mill heads there?

A. Our mill heads there ran from ten to twelve; we were milling about 2,000 tons a month.

Q. (Mr. Thatcher) That was at Gold Circle?

A. Yes.

Q. (Mr. Rowson) By way of comparison then—— [203]

A. I think the operating cost, from what I could get out of the records I had any time to go into, detailed analysis of cost given to me, 9141 tons for the present fiscal year, starting December 1st and ending, I believe, May 31st, the mining costs were given as \$2.625, development \$1.578, milling \$2.384, and general overhead, taxes, etc., \$1.493, which made a total operating cost of \$8.08.

Q. What is your idea as to the normal cost there, Mr. Schrader, for an operation of that kind, a 50-ton plant? A. Well——

Q. As being high, low, or normal?

A. Just to go over the sheet roughly, I had one criticism—not a criticism, simply a comment—to make; that I thought the executive salaries were rather higher than average for an operation of that sort.

Q. Would the operating costs for a plant twice that size be approximately the same—suppose 100-ton? A. They would be very much reduced.

(Testimony of Mr. E. J. Schrader.)

Q. Possibly I did not make myself clear or frame my question properly. Would the cost of operating a 100-ton plant be just about as much as operating this 50-ton plant at Penelas?

A. No; your fixed charges would be practically the same and in your milling operation your fixed charges in a slow sliming plant is your labor and supervision, of course; your mill superintendent; and your power does not increase in direct proportion to your mill capacity. That is, if you have a thickener with a fifty ton a day capacity settling area and it used five horse power, you would not need ten horse power for a 100-ton thickener, because it is just a big tank where the material settles by gravity, so you could have lower operating costs.

Q. Would you have any increase in man power for 100 tons than [204] 50 tons?

A. When you come to mining, you have very fixed charges.

Q. I mean man power in the mill—would it require any more man power for 100 tons than for 50 tons? A. In the mill itself?

Q. Yes.

A. No, it would not require any more.

Q. You stated a little while ago, Mr. Schrader, that in your opinion you would expect the ore deposit to continue to a depth of at least one thousand feet, based on the indications.

A. Yes, it would look like it to me. I see no reason why it shouldn't.

(Testimony of Mr. E. J. Schrader.)

Q. Will you explain why, the geological condition, pronounced fault, and matters of that kind?

A. Well, you have evidence underground of enormous movement in the formation of this vein. A fissure vein is nothing but a fault, that is all, and the fault extends for a long distance longitudinally and there isn't any reason I can see why it should not continue to a very considerable depth. The solutions that silicify the rhyolite along this fault came from great depth.

Q. Is that a very pronounced fault?

A. Yes, it is a very strong fault fissure.

Q. Has the water table been reached yet?

A. Oh no. I don't think they can reach the water table there for 500 feet, maybe more.

Q. Is the ore encountered so far oxidized?

A. Yes, all oxidized. I didn't even see pyrite and very little iron oxide.

Q. What would you say as to the probability of encountering [205] other ore bodies to the north, Mr. Schrader, not merely on the 600-foot, but on the upper levels, on the three, four and five, in addition to those ore shoots already opened up?

A. On the first and second levels the country is so broken up and you are so close to the surface that I wouldn't advise continuation of much work there. I prefer to go down to the lower levels where the formation is more solid and do my drifting there.

Q. Commencing with what level?

(Testimony of Mr. E. J. Schrader.)

A. Well, the fifth level would be all right. If you did it on the fifth, when you get these stopes thru, you have a place then where you can drop your waste. You won't have to hoist your waste. If I were going to develop that mine now, with an idea of making a permanent operation, my idea would be to put that shaft down a thousand feet the first thing.

Q. Did you examine along the east cross-cut?

A. Yes.

Q. Kindly tell us about that.

A. This cross-cut is on the third level and out here they encountered a sheeted zone in rhyolite that resembles the vein to a considerable extent, except that the layers of rhyolite, which are standing really straight up and down and about so wide——

The Court: By "so wide" you mean four or five inches.

A. Yes; they are not crushed as in these vein shoots, but in between these rhyolite layers, in this south face in particular——

Mr. Rowson: You are pointing now to the south face right east across the 300?

A. Yes—you have little seams of quartz in places as wide as [206] that pencil, and we took a sample——

Q. The pencil is about three-eighth of an inch wide?

(Testimony of Mr. E. J. Schrader.)

A. Yes. We took a sample of some of those seams and took up to the surface and panned it and got a little tail of gold that indicated perhaps \$25 or \$30 values. I would say that was a good place to do drifting. The map shows it is close to a rhyolite formation. It crops out on the hill, almost pure silica to the surface and apparently that may have some relation to that.

Q. You are pointing to a sketch on Exhibit 1, close to the east cross-cut on the 300? A. Yes.

Q. And that sketch indicates the outline of the rhyolite on the surface?

Q. (Mr. Thatcher) It is a shoe-shaped thing on the map? A. Yes.

Q. (Mr. Rowson) Did you examine the work that had been done, the lateral work carried forward there in efforts to pick up the downward extension of the Victor vein?

A. Yes, I was in those lower levels.

Q. To the south?

A. I was in those lower levels and I believe they cut the vein down there. Yes, I am sure they cut the vein down there. I climbed down the ladder here, down thru the stope.

Q. Between the second and third level?

A. Yes, and then went out onto these levels and did the same thing on the fourth level out in here. Most of the work there has been done on the third level.

(Testimony of Mr. E. J. Schrader.)

Q. That is to the south on the Victor vein?

A. Yes.

Q. What do you say as to whether or not that work was well [207] planned and fully justified, in view of the developments of that Victor vein on the upper level?

A. Well, I was told that the Victor shoot produced about \$100,000, and if I had been in charge of the property out there, I certainly would have driven out there to see whether it went down.

Q. (Mr. Thatcher) Both on the third and fourth level?

A. Well, certainly on the third level, and of course, if I had a good strong vein on the third level, with a well-defined wall there, and had any assays at all, I might have driven the fourth out there to see whether another structural condition was repeated which caused the ore shoot in the upper levels.

Q. (Mr. Rowson) Would you have done that in the early stages of development, or deferred it until later? A. Well, of course——

Q. That is, on the four hundred?

A. It would depend on circumstances.

Q. Do you mean cash available?

A. Well, to tell you frankly, if I had the capital available and had been in charge of the opening of that mine from the very beginning, my first job would have been to put that shaft down as fast and deep as possible and open up that Penelas structure in there.

(Testimony of Mr. E. J. Schrader.)

Q. That is if you had how much cash available?

A. Probably it would take \$100,000 to open up that mine; perhaps not quite that much, but you see you are 70 miles away from a railroad, you have certain fixed charges, whether you treat 25 or 300 tons a day, and therefore you should open a mine as rapidly as you can to see whether it is advisable to put in a 50-ton mill or 75-ton mill or 200-ton mill, in order to cut [208] your working costs down.

Q. If, instead of having \$100,000, you were on a budget, then what would you do?

A. Then the man that was budgeting the money would have said what to do.

Q. Would you, in that event, followed substantially the same plan of development as was followed by the management here?

A. I think so, under the circumstances, probably would have had to do just what was done.

Q. Getting back to the Victor vein, Mr. Schrader, inasmuch as the Victor vein was not picked up on the four hundred and a heavy loss resulted in the failure of that to continue to a depth of four hundred feet, and the fact that that was a total loss, as far as any immediate returns was concerned, would you say that money was well spent, by establishing negative results?

A. Well, that is what you have to do when you open up a new mine. You have a lot of well spent money, the results of which are negative, which

(Testimony of Mr. E. J. Schrader.)

eliminated certain conditions and invariably, if you go into a strange mining district, where you are pioneering and somebody else hasn't determined all the geology and hasn't done all this work, they give negative results.

Q. Is that true of any property in virgin country, where geological conditions have not been ascertained, that you must spend considerable money in order to determine these so-called negative results?

A. Unfortunately that is the case, because we can't see into the ground and further than the next man.

Q. Is that a generally accepted condition?

A. Yes, we usually expect that. Years later we go back and wonder what in the world we did this for. [209]

Q. Would you go so far as to say that the showing of the Penelas Mining Company to date has suffered materially from development work that was necessary, these so-called negative results, that were necessary by way of development in order to explore this Victor vein?

A. Well, in every mining property of that kind that I have ever been connected with, or that I have ever heard of, in the early stages money is spent in exploration work, which naturally reduces the profits from the operation during that period of time, if you have negative results.

(Testimony of Mr. E. J. Schrader.)

Q. I believe you stated at the outset, Mr. Schrader, that your preliminary examination was confined to the main workings, but did you, or did you not, go outside the main workings, so far as the Combination Bonanza? Did you go into that particular portion of the property at all?

A. We drove out to about a mile north of the main workings, where a tunnel had been driven south, oh, I estimate about 500 feet of development work had been done there, and there was a cross-cut. My recollection is it was about 200 feet long; and then they struck a vein or a fault, a very strong hanging wall with a direction and dip very similar to the Penelas vein. It may or may not be the Penelas vein—the distance is too great—and nothing has been done to prove that that may be the north end of the Penelas vein. They drifted several hundred feet along this structure without apparently finding any ore. The vein fill was just crushed country rock and talc.

Q. Are the general structural conditions there similar, or approximately similar, to what they are down below to the main workings?

Q. Quite similar. [210]

Q. Similar to those that surround the Penelas vein?

A. Very similar to that condition. On the crest of the hill a number of holes had been dug where a quartz sheet several hundred feet long had been exposed in patches here and there. Whether it was

(Testimony of Mr. E. J. Schrader.)

continuous or not, I do not know, because it didn't crop out on the surface. The float indicated that it might be fairly continuous. I was told that most of the quartz was pretty low-grade—four, five and six dollars—but the tunnel was stopped before it got under there, so the results of that tunnel were certainly completely negative.

Q. Had you ever visited the Penelas before?

A. No, never been there before.

Q. Asking you a question in mine parlance, Mr. Schrader, how do you like the looks of the country out there as a mining country?

A. I don't know just what you mean, Mr. Rowson.

Q. Well, as a miner or prospector would put it, rather than an engineer, as a mining country, how do you like the looks?

A. Well, it looks like all the rest of those Nevada tertiary volcanics. There has been a good deal of mining in that general vicinity. Lone is only a short distance from there, and I would say that generally speaking, it looks like country well worth prospecting.

Q. Did you examine the mining plant itself, the mining machinery and equipment?

A. Oh yes; I found everything being done in a very good miner-like fashion.

Q. What about the mill?

A. The mill was the same way. Usually when I go into a mill I look around and I found the ma-

(Testimony of Mr. E. J. Schrader.)

chinery was all in good shape, [211] the floors were nice and clean, didn't have a lot of slop around, had a very excellent set of forms they keep for keeping their records, and the whole thing looked to me like a well-run property.

Q. Would you, under the conditions that you have described, advise a change in the management of that property?

Mr. Thatcher: We object.

The Court: I doubt whether that is——

Mr. Rowson: This question is raised by the issue, inasmuch as that follows part of the prayer of the Petition, that there be a change in the management——

The Court: Unless something develops further, I will sustain the objection at this time.

Q. What were the conditions underground, Mr. Schrader?

A. What do you mean, conditions?

Q. Well, as to the general conditions of the mine underground, as being well managed, in good miner-like fashion?

Mr. Thatcher: We object, as leading.

The Court: You might ask him to describe the general character of the workings.

Q. Will you state that, then, Mr. Schrader?

A. Well, my impression, rather my opinion, was that they had done an excellent piece of work in their shaft; their stopes seemed to be—levels—are kept in good shape; they don't have a lot of trash

(Testimony of Mr. E. J. Schrader.)

laying around the chutes and the general timbering, where necessary, was all in good shape. The whole thing made a good impression, as far as the appearance of the underground workings is concerned.

Q. Mr. Schrader, has it been your experience that even partially developed mines, as distinguished from mere good prospects, experience lean periods during the early years of their [212] development, even tho as the years progress they might ultimately develop even into bonanzas?

Mr. Thatcher: We object to the argument.

The Court: The court will take judicial notice of that situation.

Q. May I ask this, Mr. Schrader, have you, in your experience, encountered a situation such as that where a mining property, which experienced lean years during the early stages of development, has developed, by continued work, into a well established and producing property?

Mr. Higgins: May we have that set to music?

The Court: I will permit the witness to answer it, as to whether that is in accordance with the history of mining in the West.

A. Yes, in accordance with history of mining, there are lean years and then they become bonanzas.

Q. Any particular properties you have in mind within your own experience?

Mr. Thatcher: We object to that; it is unnecessary.

(Testimony of Mr. E. J. Schrader.)

A. The Consolidated Virginia is probably a good example.

Q. What about the Homestake, isn't it true—

The Court: I don't think we will go into that mine examination. We could stay here a week on that.

Q. Have you prepared a written report?

A. No, I have not completed it.

Q. You are preparing a written report?

A. Yes, I am writing up some notes on it.

Q. You are writing a report of your preliminary examination? A. Yes.

Q. When will that be completed, about? [213]

A. Oh, I may be able to finish it tomorrow, Mr. Rowson. I am pretty slow writing up reports.

Mr. Rowson: We will ask the witness to file this report or offer it in evidence when it is completed by the witness, whether tomorrow or later.

The Court: We will consider that situation.

Mr. Rowson: Subject to my right to make the offer, I am through with the witness.

Cross Examination

By Mr. Thatcher:

Q. Mr. Schrader, take the 500-foot level. You found a shoot of ore in the immediate vicinity of the shaft?

A. Yes, that is the shaft shoot there.

Q. You call that the shaft shoot? A. Yes.

Q. What is the width of that shaft shoot?

(Testimony of Mr. E. J. Schrader.)

A. Well, on the fifth level I don't know because it was stoped out and it was just simply filled with loose material. I didn't include that in any of my calculations.

Q. That is in the vicinity of the shaft?

A. Yes, in the vicinity of the shaft.

Q. Then going further north on the map here, as number 3, shoot No. 3, can you see that?

A. That is probably an ore shoot.

Q. From the point which is marked here as probably ore shoot No. 3, how much further is it until you encounter any indications or signs of ore?

A. It looks like about fifty feet.

Q. Just from your end about fifty feet?

A. Yes, looks like about fifty feet.

Q. Then how long is the next shoot of ore? [214]

A. Then you have a patch—I didn't sample this, you see, so I just went by the amount of quartz that there was there, because I didn't have time to sample the whole mine in the few days that was given to me, but it looks as if there is about 20 feet of ore and then there is a space ten or twelve feet, which appears to be simply broken up country rock, and then there was another patch of ore which was about the same length.

Q. And then what?

A. And then there was another blank space of ten or twelve feet and another patch of ore and my recollection is that there was some more ore in the end of that fifth level, making, if you added all the

(Testimony of Mr. E. J. Schrader.)

footage together, about 100 feet there of ore which wasn't continuous, however, as I stated.

Q. It was patchy? A. It was patchy.

Q. You took no samples from that area?

A. No.

Q. You have no idea as to whether or not it would run? A. No.

Q. The fact that that was a patchy streak there, first twenty feet and another twenty feet, a crushed zone and another forty or fifty feet, and so on, what would that indicate to you as to the regularity of the values, if there were any, above the shoots? Above those areas?

A. Well, about the only thing you have to go by there figuring on this ore in here, is the experience that they had in the stopes from the 400-foot level to the three hundred, and apparently, from the appearance of such stopes as were still open there, they had the usual conditions—swells up to 8 and 9 feet and pinches down to two or three feet. [215]

Q. Do you recall what the width of these so-called ore showings were on that five hundred level north?

A. Well, the way the fifth level below levels with your vertical vein, the top of your drift is arched. The hanging wall is well defined because that is what they followed, and then they broke only a portion of the foot-wall and there anything you sample it is impossible to go to the total width—you simply come to the hanging wall section. The stopes up here in

(Testimony of Mr. E. J. Schrader.)

this section indicated they would have had an average width of five or six feet in the lower portions but the upper portions, when you got close to the surface, the stopes looked much narrower.

Q. In the five or six feet, as far as you could see, you would get some substantial amount of dilution?

A. I figured the average would be about five feet and if you get twenty per cent dilution, you would be actually stoping about six feet, due to the sloping of the foot-wall.

Q. From the examination you made, would you give any assured or positive ore between the fifth and fourth levels, based upon your experience as a mining engineer?

A. I wouldn't say anything positive. I would say, from the experience they had on the Victor shoot from the fourth level up, that you could reasonably expect a certain tonnage, perhaps 5,000, in that block.

Q. You might reasonably expect that?

A. Yes.

Q. But not assured or blocked-out, is it?

A. You couldn't block it out unless you had raised up there and blocked it out in little sections.

Q. About the only ore you can say you are going to get out is actually mined ore? [216]

A. Yes, then you know exactly what the tonnage is after you mine it.

Q. That is true in most of them? A. Yes.

Q. Anything to the south on the fifth level?

(Testimony of Mr. E. J. Schrader.)

A. No, the fifth level stopped here and at the end of this shaft shoot they stopped.

Q. Did you give it as your opinion that was probably the end of that shoot?

A. I think it is on the fifth level.

Q. No indication of any ore stopes on the fifth level?

A. No, nothing in the south face of the fifth level.

Q. And based upon other workings above on the fourth and third and other levels, is there anything to indicate to you there would be any ore south of the shoot on the 4th and 5th levels?

A. No, I don't think so. I think you are going down to where that Victor vein cuts into the Penelas vein and you come out into that broken section there.

Q. On the sixth level you found a shoot north and south of the shaft about 110 feet in length?

A. Just about.

Q. And in the north part what width?

A. About two feet wide in the face.

Q. It narrowed down, and did you notice whether or not there were any values in the face?

A. I believe that the last sample was taken in the face, George; it ran \$18.84.

Q. From the indications it was giving out, as far as the ore shoot is concerned?

A. Yes, it looked to me as if they were coming to the end of [217] that ore shoot in the north end.

(Testimony of Mr. E. J. Schrader.)

Q. Would you give any further tonnage in that shaft as being positive or assured, except what you gave here on that particular shoot?

A. I don't know just exactly what you mean, Mr. Thatcher. I estimated my width and the possible dilution that there would be, about 5,000 tons in that shaft shoot between the fifth and sixth.

Q. After allowing for probable dilution, you would get a mill head of probably——

A. Probably \$20 and possibly some over that, based on my samples.

Q. Would you say there are 30,000 tons of ore below the six hundred of a grade of \$15 a ton?

A. Thirty thousand tons below the 6th level?

Q. Yes.

A. I wouldn't estimate anything, because I can't see it. If you will permit me, I will say this——

Q. No, that is all I want you to say at present.

Mr. Rowson: The witness should be permitted to answer.

Mr. Thatcher: He has answered.

Mr. Rowson: We submit the witness should finish.

The Court: If he has anything in the way of explanation, he can put it in at this time.

Mr. Rowson: Continue, Mr. Schrader, with your answer.

A. Well, I believe that the vein will continue to a possible depth of a thousand feet. I saw no evidence whatever on the sixth level that the ore should

(Testimony of Mr. E. J. Schrader.)

not continue down. How far it will go down, I don't know, because I can't see underground.

Q. Your prediction then, as far as continuance of the vein, is that in your opinion the vein would continue to a thousand feet possibly? [218]

A. Yes.

Q. But you wouldn't make any prediction as to the amount of tonnage of ore?

A. I see no reason why the ore shouldn't continue thru from the evidence on the sixth level.

Q. That is merely a guess—you can't see any further underground than I can?

A. That is true, but after you have mined—

Mr. Rowson: The Court will take judicial notice of that.

The Court: I will permit the opinions. There is a question as to the weight to which they are entitled, if any.

Q. Mr. Schrader, would you, as an engineer, estimate that below the six hundred foot level there is 30,000 tons of ore of a grade of \$15?

A. Do you mean positive?

(Question read.)

A. Well, I would say it is possible.

Q. It might be possible, is that right?

A. It is possible that there would be.

Q. Would you, as an engineer reporting on a property, would you make a statement that there is possible ore, or that there is potential ore, possible ore, of 30,000 tons with a grade of \$15 per ton in the Penelas mine below the 600-foot level?

(Testimony of Mr. E. J. Schrader.)

A. No, as an engineer, I wouldn't guess on something that is as wild as that.

Redirect Examination

By Mr. Rowson:

Q. Nevertheless, Mr. Schrader, when that question was first asked, you did, did you not, say that it was possible?

A. Yes, it is possible, certainly. [219]

Q. And in the mining world there is such a thing as possible ore and such a thing as estimating possible ore? A. Yes.

Q. Even tho you can't see it, even tho it is not developed below the level extending under it?

A. That is right.

Q. So that your first answer to that question propounded by Mr. Thatcher, that that was possible, when he asked you would you estimate, or would you be willing to estimate, that there was 30,000 tons of ore of a grade of \$15, possible ore below the sixth level, your first answer to that question being that that was possible, was correct and reflects your idea what condition is there below the six hundred?

A. Yes. Yes. If it is permitted, I would like to say just exactly how I would express that if I were writing a report on that property for a possible purchaser. I would say if this shoot on the sixth level goes down to one thousand foot level, a further depth of four hundred feet, and is no longer

(Testimony of Mr. E. J. Schrader.)

and no wider than it is on the six hundred-foot level and carries approximately the same values, then there are so many thousand tons of ore in that block. That is a possibility.

Q. That also contemplates it will be no smaller, no shorter and no narrower. Is that right?

A. Yes, I have already stated, Mr. Rowson, what I would do immediately with the property, put that shaft down to a thousand feet. I wouldn't do that unless I thought there was possibility of finding ore at that depth.

Q. You think sinking the shaft a thousand feet would be justified because of conditions that prevail on the five and six?

A. Because of conditions prevailing on the fifth and sixth level, it would justify sinking on that shaft. [220]

Q. Mr. Thatcher referred in one of his questions to blocked-out ore, Mr. Schrader. In the engineering world today, do engineers ordinarily pay very much attention to blocked-out ore, distinguish between blocked-out ore and assured ore?

A. Well, generally speaking, today that term has become obsolete for engineers, because the term originated at a time when mines were more or less fully developed and largely developed for the purposes of sale and in those cases the ore was carefully exposed on four sides with blocks on every 100 feet long and under those conditions we spoke of blocked-out ore, but you don't find mines like that nowadays, very seldom.

Q. While it is true, as Mr. Thatcher stated, about (Testimony of Mr. E. J. Schrader.)

the only way you can tell what you are going to get out in the way of ore is by actually mining it, it is true, all the same, that engineers do refer in these days to assured ore and that assured ore, that term assured ore, correctly describes the ore that is now uncovered on the fifth and sixth levels of the Penelas Company's property?

A. I would qualify that by saying it was reasonably well assured because it might pinch in and also it might widen out much wider than on the level. Those are conditions that you can't see and therefore I would say that it is reasonably well assured; in other words, it might be increased or diminished, either way.

Mr. Rowson: That is all.

Mr. Thatcher: That is all.

The Court: Court will be in recess until tomorrow morning at 10:00 o'clock.

(Recess taken at 4:30 P. M.) [221]

Saturday, July 2, 1938.

Reno, Nevada.

10:06 A. M.

Mr. Schrader resumed the witness stand on further cross-examination by Mr. Thatcher.

Q. What number of cubic feet did you use in the compilation of the amount of ore that is there?

A. I used, I think it was 12½ feet.

Q. In place? A. Yes, in place.

Q. I wish you would give some consideration to

(Testimony of Mr. E. J. Schrader.)

that before next week and see whether or not you might revise that.

A. If I can get the specific gravity of the ore I can figure it out.

Redirect Examination

By Mr. Rowson:

Q. Mr. Schrader, you testified yesterday with reference to the operating costs, that, with the exception of the executive salaries that were paid, if I recall your testimony, that the operating costs were normal, is that correct?

A. Yes, I think for a mine in that condition and under Nevada operating expenses that they are not very much out of line.

Q. How do they compare, for example, with the operating costs of other properties with which you are familiar of similar character?

A. Well, the only one that I ever operated is the one I mentioned yesterday at Gold Circle Consolidated and in checking that to get the six months' period of 1929, the last six months' record I had at Gold Circle, our total operating costs were \$7.92 for 12,116 tons, which is approximately 2,000 tons per month. That would compare with the figures given to me for the fiscal year starting July 1, 1937, of \$8.08. I think the dif- [222] ference in tonnage would easily account for the slightly higher figures there.

Q. What is the location of this Gold Circle property? Where is it?

(Testimony of Mr. E. J. Schrader.)

A. It is up in Elko County, about 37 miles from the station of Redhouse.

Q. The station of Redhouse is a rail point, is it?

A. Yes, that is a railroad point on the Western Pacific.

Q. You say it is 37 miles from the railroad?

A. Yes.

Q. Do you know how far the Penelas property is from the railroad?

A. I think it is about 70 miles.

Mr. Rowson: That is all.

Mr. Thatcher: That is all.

Mr. Rowson: It is understood Mr. Schrader may be recalled by either party and we so stipulate. Now, if your Honor please, with the exception of the offer which we propose to make of the written report Mr. Schrader is preparing on his preliminary examination of the property, and also with the exception of offers of certain correspondence which passed between Mr. White and myself commencing November or December of 1937, and also certain letters which have been referred to here and requested by Mr. Thatcher yesterday, correspondence between myself and Mr. Little and also between Mr. Thatcher and myself with reference to the demand for the transfer of the stock, subject to the reservation that we wish to make those offers, the debtor will rest.

Mr. Thatcher: Then I think we might as well recess until Wednesday. [223]

(Testimony of Mr. E. J. Schrader.)

The Court: This case will be continued until Wednesday morning at Reno.

(Recess taken at 11:00 o'clock)

Wednesday, July 6, 1938.

Reno, Nevada

10:10 A. M.

Mr. Rowson: May it please your Honor, when we recessed last Saturday, I stated to your Honor and counsel that with the reservation certain letters were to be offered in evidence, the debtor rests, but since then Mr. Schrader has been out to the property and I would like to recall Mr. Schrader for one or two further questions.

The Court: All right.

MR. SCHRADER

resumed the witness stand on further

Direct Examination

By Mr. Rowson:

Q. Mr. Schrader, within the past few days have you again visited the Penelas property?

A. Yes sir.

Q. When did you go out there?

A. I went out Saturday morning and returned Sunday night.

Q. Who accompanied you?

A. Mr. White and Mr. McDaniel.

Q. Did you go down the shaft? A. Yes sir.

Q. What levels did you visit?

(Testimony of Mr. E. J. Schrader.)

A. Well, we went pretty well thru the mine; most of the time was spent on the lower levels.

Q. Did you find there had been any further development on those levels since you were there a week ago?

A. Yes, the sixth level had been extended and some development [224] had been done there.

Q. When you say the sixth level had been extended, do you refer on the ore shoot on the sixth level? A. The drift itself.

Q. What else, if anything, did you find in the so-called shaft shoot on the six hundred foot level since you were out there before?

A. In the north end I was told, from the point where I had sampled before and estimated the end of the shoot had been reached, because the ore narrowed down to a little over two feet, the next round they didn't have any ore and then the ore opened up again, so that they have ore in the present north face.

Q. About how wide is that face?

A. About four feet, a little over four feet.

Q. And what about the south end of that ore shoot?

A. Well, the south end they had extended that face and the present south face is in waste and the mine superintendent said that he thought that the last ten feet in the south face was all in waste.

(Testimony of Mr. E. J. Schrader.)

Q. What was the total distance from the face at the north of the shoot to the face at the south end of the shoot? The total distance?

A. I think the total distance of the drift there is probably in the neighborhood of 150 feet.

Q. (Mr. Thatcher) That is the drift?

A. Yes.

Mr. Thatcher: The question was the shoot.

Q. (Mr. Rowson) What is the length of the shoot, if you know, at this time? [225]

A. I think the length of the shoot, including that blank space which I assume is between five and ten feet in the north end, they have 144 feet.

Q. Would that give then a total distance of something over 130 feet for the total length of the ore shoot?

A. Well, it would give about 130 feet of what you might call ore, yes.

Q. That would be 130 feet of ore instead of 110 feet it measured when you were out there a week ago?

A. That is right.

Q. I believe you testified, Mr. Schrader, last week, that in making your estimate of 5000 tons of reasonable assured ore on the six hundred-foot level, that you had based that on the then length of the ore shoot as 110 feet?

A. Yes, about 5000 tons.

Q. And in view of this further development of that ore shoot to a length of approximately 130 feet, do you feel now that that is a conservative estimate?

(Testimony of Mr. E. J. Schrader.)

A. Yes, I would say that was a very conservative estimate.

Q. In other words, your estimate has been justified by the recent developments?

A. I think so. I would let it stand at 5,000.

Q. Did you go on the fifth level also?

A. Yes.

Q. Did you find any further development on the five hundred foot level on the north ore body?

A. They had driven a cross-cut at the south end, approximately at the south end, of the stretch of ore, which is about fifty feet long, which would be the north terminal of that patchy shoot and they had driven a cross-cut into the foot-wall, broken thru [226] the foot-wall, and it looks like they have about 15 feet of ore in that particular spot.

Q. What was the width of the face when you examined the property before?

A. It was just the width of the drift, about five or six feet.

Q. And that has been cross-cut now to about fifteen feet? A. At that spot, yes.

Q. On the five hundred foot level, when you testified last week, you testified that you estimated 5,000 tons on the 500-foot level in that particular ore body, I think as reasonably assured ore? A. Yes.

Q. And does this further development by this cross-cut, extending the width of that face from five or six feet to fifteen feet, does that now lead you to

(Testimony of Mr. E. J. Schrader.)

believe that your estimate is a good conservative estimate as to the tonnage on that ore body?

A. Yes, I don't think I would decrease it.

Q. Would it tend to increase it rather than decrease it?

A. Well, I think I will let it stand and be safe.

Q. Did you visit the Combination Bonanza?

A. Yes.

Q. On this recent trip? A. Yes.

Q. Did you make any further examination of the Combination Bonanza?

A. Went thru the tunnel and I came to the same conclusion that the tunnel had not reached the ore exposure at the crest of the hill; that is, the quartz exposure.

Q. Did you take any samples on this trip, Mr. Schrader? A. Yes. [227]

Q. From the north ore body on the five hundred and also from the so-called shaft shoot on the six hundred? A. Yes.

Q. And from the Combination Bonanza?

A. Yes.

Q. And have you received assay certificate from those samples? A. Yes.

Mr. Rowson: We offer in evidence the assay certificate of the samples taken by Mr. Schrader. We will identify them all so we may have them in the record.

Mr. Thatcher: No objection.

Clerk: Debtor's No. 23.

(Testimony of Mr. E. J. Schrader.)

Q. You have certain pencil notations on the assay certificate, Mr. Schrader. Will you kindly explain where these samples were taken? By the way, were they cut samples or grab?

A. Some of them were grab; I will let you know.

Q. Explain them, if you will.

A. Sample 611 was across 4.2 feet in the north face of the sixth level. That is 82 feet to the center of the cross-cut and the value was \$12.43. Sample 612 was 61 feet south of the shaft cross-cut. That was across 5.3 feet in the back of the drift about where Mr. McLaughlin, the mine foreman, estimated the ore shoot ended in the south drift of the sixth level, and the value was \$3.38. Sample No. 613 was taken in the fifth level on the north shoot, where they had driven a cross-cut into the foot-wall and thru the foot-wall, and this sample was taken from the broken ore, or what we call the muck pile, a representative width of about ten feet from the foot-wall, towards the hanging-wall, and that sample had a value of \$11.50. Sample No. 614 was taken in the same place and was from the muck pile that laid in [228] the drift and would therefore represent about five feet under the hanging-wall towards the other sample, and that ran \$6.96. Sample No. 615 was taken on the crest of the hill on the Combination Bonanza working, about a mile north of the main workings, and was a grab of a small dump of quartz

(Testimony of Mr. E. J. Schrader.)

at a shallow hole that had been dug on the vein up there and that ran fifty-five cents.

Mr. Rowson: You may cross-examine, Mr. Thatcher.

Cross Examination

By Mr. Thatcher:

Q. The shaft shoot has been the important shoot in the mine, as far as you can see, Mr. Schrader?

A. Yes, at the present time.

Q. And it is comparatively short?

A. Yes, it is comparatively short.

Mr. Thatcher: That is all.

Mr. Rowson: That is all.

Mr. Rowson: I discovered, if your Honor please, that page 3 of Exhibit 20, which was the statement showing the source of funds, somehow became detached. I did not see it until yesterday afternoon when Mr. Gordon handed it to me, but I would like to recall Mr. Byron James to identify this page 3 and then, with the consent of your Honor and if agreeable to counsel, have this page 3 incorporated in Exhibit 20, statement of source of funds. This particular page shows a schedule of the land, buildings, machinery, tools, etc., schedule of supplies on hand and schedule of current assets. [229]

MR. JAMES

was recalled on direct examination by Mr. Rowson, and testified as follows:

That he had prepared the statement entitled "Source of Funds" known as Exhibit No. 20, and he prepared the third page from the corporate records. This page shows in detail the different inventories as they are shown in the books, the mill supplies and Diesel oil, gasoline and lubricating oil, explosives, boarding house supplies and material in the warehouse inventory, timber, carbide, pipe fittings and so on. And also what the current assets are. By current assets is meant cash or cash accounts receivable in bullion in transit.

Cross Examination

By Mr. Thatcher:

This data was prepared from the books about ten days ago and it brings the matter up to May 31, 1938. On May 31st there was \$8,385.21 on hand in cash and the bullion in transit was \$7,664.41. That was the net amount due on that shipment after smelter reductions and that was received in cash after May 31st.

Redirect Examination

By Mr. Rowson:

He could make a close estimate on the operating profit and loss for the month of June and he had prepared a tabulation from the corporate records.

(Testimony of Byron James.)

This was then offered in evidence as Debtor's Exhibit No. 24. The statement showing income and estimated expenses for the Penelas Mining Company for the month of June, 1938. He explained the reduction in operating expenses for the month of June by taking an average monthly cost over a period of the past six months, which was the current fiscal year beginning December 1, 1937 to May 31, 1938. The total expenses including interest, but exclusive of depreciation and depletion, [230] were \$83,520.64, or an average of \$13,920.10 per month. The payroll over that same period of six months amounted to \$45,370.84 or an average of \$7,561.81 per month. The June payroll amounts to \$6,237.53, or a reduction from the average of \$1,324.28 of the previous six months. In addition to the reduction in labor costs, he estimated that there would be a saving of approximately \$250.00 in fuel during June because the winter months were over. That same saving as to fuel will apply to July, August and most of September. The labor reduction is not estimated, it is exact. The total estimated reduction, \$1,574.28, based on the average of the previous six months will reduce expenses to \$12,345.82. Arriving at this net profit for the month of June, taxes and interest were deducted, including \$7,000.00 interest on R. H. White and Katherine White's notes. The net operating profit for June was \$9,622.08. 1,392 tons of ore were milled, giving a profit per ton of \$6.912. The per tonnage amount

(Testimony of Byron James.)

is not on the exhibit itself. The per ton value of the bullion produced and shipped was \$15.78. (The witness then made those notations on the exhibit).

The total expenses per ton are \$8.868. Regarding the notations, the 15.78 represents the value per ton on bullion shipped. \$8.868 is the cost per ton of all expenses of ore milled; the estimated profit per ton of ore milled being \$6.912.

Recross Examination

By Mr. Thatcher:

In the expenses for June, there was included a \$250.00 salary to Mr. White and \$800.00 salary to Mr. Gordon. Both of these salaries were included in the expenses for the six month period and the only reduction made from those expenses was the actual known labor reduction plus the fuel. [231]

Mr. James was then asked the following questions and gave the following answers:

“Q. (Mr. Thatcher) You didn't itemize for the month of June what the stoping operations were?

A. I have no way of knowing that at this time of the month. It is usually about the 10th of the following month before I can assemble those figures.

Q. Or development operations?

A. They are included in that.

Q. But you don't say what they are, you don't total them?

(Testimony of Byron James.)

A. I don't know yet for the month of June.

Q. Then you don't know for the month of June what the cost of stoping operations were?

A. No, I don't know.

Q. Or the milling operations?

A. I don't know that.

Q. Or development operations?

A. I don't know that.

Q. Or shaft extensions?

A. No, I don't know that.

Q. Or the non-operating departments?

A. I don't know that.

Q. Then it is merely an estimate, this figure of \$12,345.82?

A. Yes, it is an estimate.

Q. But you give it down to 82 cents.

A. Pardon me?

Q. Simply an estimate, is that correct?

A. Oh, yes, it is an estimate; in fact, it is typed on there it is an estimate. [232]

Redirect Examination

By Mr. Rowson:

Q. But it is an estimate, as I understand, Mr. James, based upon an average over a six months' period? A. Yes.

Mr. Thatcher: No, I am talking about the month of June.

A. If anything, the expenses will be less than that because during the month I estimate

(Testimony of Byron James.)

in my mind what we order and what our purchases are and they appear at this time to have been less than during the previous months.

Mr. Rowson: That is all.

Recross Examination

By Mr. Thatcher:

Q. What was the cost of the stoping operations, milling operations, development operations, administrative expenses, shaft expenses, non-operating department and interest for the month of May, 1938?

A. I will have to refer to one of the reports. It is on the last exhibit, Exhibit No. 19. Now, as these appear on here——

Q. Just the total, that is what I want.

A. I will have to make a deduction here. \$13,826.13.

Q. What deduction did you make?

A. I added the deficit to the income; that is how I arrive at that figure.

Q. For the previous month?

A. For the month of May.

Q. For the previous month?

A. Yes, this if for the month of May; isn't that the month you were interested in?

Q. What I am trying to find out is what you deducted and where?

A. The income amounted to \$12,797.57. We had a deficit of \$1028.56. That, added to the

(Testimony of Byron James.)

income will give you total [233] expenses, including interest.

Q. (Mr. Rowson) What was that amount, Mr. James?

A. \$13,826.13.

The Court: And what was the corresponding figure for June; you say \$12,345.82?

A. \$12,345.82.

Mr. Thatcher: That is all.

Mr. Rowson: That is all."

Mr. Rowson then offered in evidence the correspondence file between himself and R. H. White, and R. H. White and L. D. Gordon commencing with a letter from White to Rowson dated December 13, 1937; the same being admitted and described as Debtor's Exhibit No. 25. Mr. Rowson then asked leave to offer in evidence as Debtor's Exhibit No. 26, the file of correspondence between himself and Mr. J. C. Little of the firm of Tolles, Hogsett and Ginn, Cleveland, Ohio, and the same was admitted.

The Debtor then rested.

Mr. Thatcher then offered in evidence a letter from Gordon to White dated May 1, 1934, and also a letter from Gordon to White dated May 2, 1934. These were admitted as Intervener's Exhibit "J". Mr. Thatcher then offered as Intervener's Exhibit "K", a letter from Mr. Gordon to Mr. White dated November 22, 1937; same being admitted. Mr.

Thatcher then offered as Intervener's Exhibit "L", a letter from Mr. Gordon to Mr. White dated November 10, 1937, the same being admitted. Mr. Thatcher then offered the following Intervener's Exhibit "M", a letter from Mr. Gordon to Mr. White dated September 26, 1937, the same being admitted. Mr. Thatcher then offered as Intervener's Exhibit "N", a letter from Gordon to White dated November 22, 1937, the same [234] being admitted. Mr. Thatcher then offered as Intervener's Exhibit "O", a letter from Gordon to White dated August 19, 1937, the same being admitted. Mr. Thatcher then offered two letters dated August 17, 1937 and August 10, 1937 as one exhibit, being copies of letters from Mr. White to Mr. Gordon. These were admitted as Intervener's Exhibit "P". Mr. Thatcher then offered a letter dated August 9, 1937 from Gordon to White, to which is attached an assay report of Penelas Mill heads and tails, and a copy of a letter from Mr. White to Mr. Gordon dated July 30, 1937 as one exhibit; both of these being admitted without objection as Intervener's Exhibit "Q".

MR. GROVER HIGGINS,

being first duly sworn, testified as follows:

He is a lawyer residing at 13301 Lake Shore Boulevard, Cleveland, Ohio, and is a member of the firm of Tolles, Hogsett and Ginn, with offices in the Union Commerce Building in Cleveland.

(Testimony of Grover Higgins.)

He knows Mr. and Mrs. White, and other members of the family. That he has had a great many conferences with Mr. White and some conferences with Mr. King White, his son; that his firm has been counsel for Mr. White and counsel for members of his family throughout a period of twenty years.

He met Mr. Gordon on May 19th of this year in Cleveland, and had a long conference with him on the morning of the 19th, at which Mr. White and Mr. Little were present, concerning the Penelas Mining Company, and on the afternoon of that day had a short conference with Mr. Gordon alone, and that evening Mr. Gordon went to Higgins' home for dinner alone. At the morning conference at which Mr. White and Mr. Little were present, most of the talking was done by Gordon and Higgins. He and Mr. White [235] informed Mr. Gordon that White had been for a long time dissatisfied with the situation and the information which he received in regard to the mine and its operations had always proved unsatisfactory. Gordon had made optimistic statements and estimates which had not borne fruit; also, at a subsequent period during the winter of 1937 and 1938, no reports came to Mr. White. Mr. White, at that time, mentioned, among other estimates, the failure of the predictions to live up to Mr. Gordon's estimate as to what could be done in the building of the mill, the ability to operate the mill from the ore that was available without the necessity of further

(Testimony of Grover Higgins.)

large additional sums. Mr. Gordon mentioned a large ore dump which would average \$20 a ton. It later proved to have a value something less than \$10. Gordon made other optimistic statements. Mr. White stated at that conference that he had had trouble and delay in getting the mining reports which he considered he should have. Mr. Gordon made excuses for the delay of the reports by saying that he had been ill, but other times he thought reports had been sent or lost in the mail, or in some way had not reached Mr. White, but in any event they had been sent. Mr. Higgins raised the point that under the contract Mr. White had as security for his loan a pledge of some 37,500 shares of the stock of the corporation, which had been issued at the time of Mr. White's advancement of funds to Mr. Gordon, and under the contract hypothecated to White, endorsed in blank. Higgins pointed out to Mr. Gordon at that time that the only possible security, value of the stock of the corporation as security for the debts of the corporation, was the power which the stock would give to secure voting control. Higgins pointed out to Gordon that if the corporation could not pay its debts, that obviously the stock would be valueless and consequently the [236] hypothecation or pledge of stock as security for the loans was intended, and could only be intended, in the event of default of the payment of the loans, to give to the debtor the voting rights carried by the stock which had been pledged. Gordon

(Testimony of Grover Higgins.)

understood that but wanted another chance. He explained the amount of time he had spent on the mine both before and after he met Mr. White, the difficulties which he had encountered, and said if he was not allowed to continue it would injure his reputation in Nevada and admitted that he had made a great many mistakes in the past. He knew that he had been given bad advice by Mr. Rowson, his lawyer; that he could understand about the stock, but that he was there to beg Mr. White to give him another chance, and if that chance were given, he would not make the mistakes in the future that he had in the past and that he would no longer accept the advice of Mr. Rowson. This advice had been bad and had brought on a great deal of trouble. Gordon was extremely nervous, and from the conversation he realized that Gordon was not mentally or physically in a state to enable him to carry on the operations of the mine to the best advantage. Gordon's sentences were disjointed; he would stop and look out the window and he would come back and beg Higgins and White for an opportunity not to lose his reputation by being deposed. At that time he suggested to Gordon that he and Mr. White would go out and confer together. Gordon then left the room and after talking with White, Higgins told Gordon what he thought should be done in the matter. (Rowson then objected to this because Gordon was not in the room. The court allowed the evidence for the time being, subject to objection later. Mr.

(Testimony of Grover Higgins.)

Thatcher said that it was hearsay, and didn't object to its going out). He then told Gordon it was necessary for him to get his health back [237] that Mr. White was not satisfied with the conduct of the management of the mine; that he had lost confidence in Gordon and he told Gordon that in view of his physical and mental condition that it was sound procedure that he should take a sufficient rest and recover his health; that White and Higgins had every desire in the world to protect him against any unjustified loss of face or to injure his reputation. Higgins proposal was that the power of attorney to vote the 37,500 shares should be given to Mr. White and that the Board of Directors should be reorganized and enlarged so that White should have the voting control and that Gordon should remain as a member of the Board of Directors and as vice president of the company and retain his title as general manager, and that he advise people that he was going to take a leave of absence to get his health back; that during this period his salary should be reduced to \$500.00 a month and Mr. White's salary should be eliminated. Gordon wanted to know how long that would continue and Higgins told him it would be impossible to tell; that from White's standpoint, a direct management in which he had confidence should be in charge of operations.

Gordon then said the situation was not bright; that the so-called Victor vein was lost and lost forever and he had no other data indicating any hopeful or good prospects.

(Testimony of Grover Higgins.)

Gordon asked for an assurance that his salary would continue for six months. Higgins told him no assurance could be given; that much would depend on what was found after the mine had, during Mr. Gordon's recuperation, been operated by engineers or a manager in whom White could have confidence. Higgins and White assured Gordon that they would not advertise the fact that there was any trouble or dissatisfaction between White and Gordon. Higgins said his proposal gave Gordon what [238] Higgins understood to be the top salary of a mining engineer in charge of an operation of that character. That if another manager or engineer ran the mill, White would have the benefit of finding out what there was there so that they could intelligently decide what should be done in the future. Mr. White never expressed any desire to close out Gordon's equity, but on the contrary, assured him that he was not attempting to injure him. Gordon was told that if his health improved, and they got somebody in in whom Mr. White had confidence, that he (Gordon) could come back and carry on. There was no desire at the present time to deprive Mr. Gordon of his equity.

He knows Mr. J. C. Little, who is one of his law partners; that he arrived in Nevada on the 11th day of May and was in Nevada through the 13th of May, 1938. (The following testimony was objected to by Debtor as being irrelevant, incompetent, hearsay, self serving and a statement of conclusions but was admitted for the time over Debtor's motion

(Testimony of Grover Higgins.)

to strike, with leave to move to strike out later.) That his instructions were that no plan of reorganization be presented during the period of the incumbency of Mr. Gordon and Mr. Rowson because they would have no assurances as to the underlying data and the facts in view of their conduct acting in the past as vice president and as secretary of the company, and as a majority of the Board of Directors, intentionally concealing from Mr. White, the president and director and a fifty percent stockholder as well as the principal creditor of the company, the action taken at a so-called meeting of the directors, which, according to the record in this case, was certified as having been held on a date prior to the time when it actually was held, if it was ever held, for the purpose of concealing the situation from its director and president, and from the further fact that Mr. Rowson as secretary has used his office to further the interests of his client Mr. Gordon in refusing to transfer on the books of the company stock certificates endorsed in blank and presented to the secretary of [239] the company for ministerial action of transfer. For those reasons his instructions were that no credence could be given or any serious consideration to any plan of reorganization which would be presented as a result of the continued control of those gentlemen in charge of the affairs of this company.

In the event the court should be of the opinion that the petition was filed in good faith and a trus-

(Testimony of Grover Higgins.)

tee were appointed to carry on, and adequate opportunity were given to Mr. White to know the true situation as it develops, then, of course, any plan of reorganization would be given consideration. That is, if an independent trustee was appointed, instead of continuing the debtor in possession. That question is the crux of the position of the consideration of any plan which might be put forward.

Cross Examination

By Mr. Rowson:

It was his understanding from the conversation shortly before the mill was constructed that there were two or three thousand tons of ore on the dump, and altogether on the dump and otherwise broken ore mined and ready for substantially immediate use, some 18,000 tons, all of which would average \$20.00 a ton. That this came up in connection with White's statement at the time that that ore which was available, which was the 18,000 tons, would keep the mill busy at a very substantial profit so that the mill itself would be paid for within something like a year. He wasn't quite sure as to the time, but it was while the mill was in contemplation, or while it was being immediately started.

MR. R. H. WHITE

was called as a witness, and after being duly sworn, testified as follows:

That he was in Nevada at the time of the organization [240] of the Penelas Mining Company and during the organization proceeding and immediately preceding it was at a meeting which took place with Mr. Gordon, Mr. Rowson and Mr. Little being present, the meeting being held in Rowson's office.

At that time there was a discussion as to the time the notes should run, or the maturity of them. White was in favor of one year notes, while Gordon wanted three year notes. White could not see why, with the estimated profit of \$100,000.00 the first year, they should not be one year notes. This money was to be advanced not all at one time, but as called on. \$65,000.00 was the amount estimated the mill would cost, and this was to be advanced as needed. Mr. Gordon brought up the point that on one year notes they might have some bad luck getting the mill into operation and was told that if the facts warranted, the notes would be extended. Finally, as a compromise, Mr. White agreed to two and one-half year notes. There was no discussion in regard to leniency on the notes, nor any commitment by White for further than two and one-half years. At that time White never made any statement that there would be any leniency on the notes or any extension, after the notes were made for two and one-half years.

(Testimony of Mr. R. H. White.)

About a year ago Mr. White came to Reno with Mr. McDaniel and Mr. Gordon had just found the Victor vein and was feeling very good. He informed White that he would start to pay off on the notes at \$5,000.00 a month, beginning with the first of January, 1938. At that time it didn't seem possible, but White made no comment.

Several mornings later, while White and Gordon were at Fallon, White noticed that Gordon was in a highly nervous condition and would go out before breakfast and throw up. White then [241] expressed the opinion that he should go to a clinic in La Jolla, where Mr. White had been, with a view to regaining his health. Gordon didn't want to go, offering as one of the reasons that he wanted to be able to pay White \$5,000.00 by the first of January. White told him to forget it. That his health was more important.

White had no desire to foreclose on Mr. Gordon if he could get management and control so that the property could be managed better and the representations as to White more accurate. In view of the fact that he owned half of the stock and that an additional 25% had been pledged to him, and that all of the debts were owing him, he should have control of the company.

After the development with the \$24,000.00 that White put in was made, Gordon estimated 18,000 tons of \$20.00 ore was there and thought it would yield a profit of \$100,000.00 the first year of opera-

(Testimony of Mr. R. H. White.)

tion. White presumed he meant with a mill, but either was satisfactory with him. Gordon told White that Chaffin had sampled the dump and found it averaged about \$30.00. White took three or four samples in different places. One ran less than \$9.00, while the other samples ran above \$20.00.

Gordon asked White for permission to ship three or four carloads to the smelter and to use that money to build the houses for the men working there, which was done. Gordon sent White the returns from the shipment and according to White it was approximately \$15000.00.

Cross Examination

By Mr. Rowson:

The conferences spoken of were held at the time of agreeing on incorporation. Mr. Little was present and took part in the discussion in Rowson's office in Reno, Nevada. He was [242] sure that Little took part in the conversation regarding the notes and that Little was present whenever there was a meeting.

He did not remember if Rowson suggested the notes should be for four or five years, but that the conversation was not brief, but extended over an hour. The discussion was probably between Gordon and White, with Mr. Little taking White's side and Rowson taking Gordon's side. Mr. Little expressed himself as favoring a one year note, and White on the one year basis was willing to be lenient and give

(Testimony of Mr. R. H. White.)

an extension but did not state how long an extension he would grant. The offer to be lenient occurred before White and Gordon had decided on the two and one-half year term notes.

White did not recall whether he had suggested that Rowson be made a member of the Board of Directors. However, it was satisfactory to him at the time. He remembered Rowson saying he did not want to be on the Board or be secretary, and it was at the suggestion of White and Gordon that he should be secretary. He remembered that Rowson did say he did not desire to be secretary, but didn't remember Rowson pressing the point. Rowson, to his recollection, did not suggest that Gordon's salary be \$800.00 a month. It was White's own suggestion that he (White) be paid \$250.00 for acting as president. Nothing was said about any salary for the secretary. Rowson was not on a retainer as attorney for the company.

He was positive that Little was present when the salaries were discussed and when the term of the notes was discussed, but that he, not Little, made the suggestion that they should be for one year. Little agreed with this. That he and Little had discussed the matter also at the Riverside Hotel when Rowson was not present. There was no discussion of the due dates of the notes about a year ago when he came out with McDaniel, nor [243] was there any discussion a year ago with any other person.

He further stated he told Gordon he could forget the payment of the \$5,000.00 on the first of January

(Testimony of Mr. R. H. White.)

in order that Gordon could go to a clinic. He had no discussion with Mrs. Gordon relative to the extension of the notes, but he did have a conversation with her in July, 1937 in Fallon, Nevada, but did not remember that the notes ever came up in any conversation with her, either then or at any other time.

He did not average the samples from the dump, but one went less than \$10.00, and the rest ran over \$20.00, one of them running a full \$30.00.

It was sometime in March, 1935 that Gordon estimated to him that there were 18,000 tons of \$20.00 ore.

He first expressed dissatisfaction with Gordon's management of the property to Gordon at the time of the building of the mill. This took place toward the end of the mill construction and the conversation took place at the mine. He informed Gordon that it was not being managed well, but expressed no desire at that time for a change in management. Mr. Chaffin was there and said everything had been done backwards. Gordon had estimated he could build a mill in three months and it had taken him six months. The dissatisfaction was that it took six months to build the mill instead of three months. He also told Gordon once or twice that his estimates were inaccurate, both in regard to the cost of the mill and his estimates on ore reserves.

He had taken the matter up with Rowson by letter, but had never expressed dissatisfaction to Rowson prior to the letter he wrote in November or

December of 1937, and had never written to Rowson between November or December, 1937 and late in March of 1938, saying anything about the imminency of the promissory [244] notes. He had never thought his dissatisfaction serious enough to take up with the directors or with Rowson. He was worried because the average of the returns did not show better grades of ore.

McDaniel expressed the opinion, from a casual observation, that the tracks were laid well, were kept up well, that the mill was orderly, and that it was well run, but he did not go into the accounting of the company's books.

White's suggestion that Gordon go to La Jolla was not done by way of reward, but merely because he thought Gordon was a sick man and that it would put him in better health so he would be a better manager. When he brought McDaniel out in 1937 he had no idea of supplanting Gordon with McDaniel, but since then the idea has been talked of. He first got this idea when the petition under 77B was filed, but had had no idea of doing so prior to the filing of the petition on June 1, 1938. He had discussed the matter with McDaniel and McDaniel suggested that someone else could be employed at a lesser salary than Gordon was receiving, and who would be just as good. This discussion took place in the winter of 1937-38.

When he first brought McDaniel out, he suggested he would like to have McDaniel keep in touch with the mine and offer any suggestions which he had. In

(Testimony of Mr. R. H. White.)

the past winter he had written to McDaniel asking him if the circumstances came around if he would be willing to run the mine. McDaniel answered, saying he would rather have somebody else, but that he would act as advisor. This letter was written after Christmas.

McDaniel had made no efforts to sell the property as a [245] whole or dispose of White's interest on a commission basis. In October, 1937, McDaniel came to visit his daughter in Cleveland and White asked McDaniel whether the property was salable. McDaniel did not know, but was going to New York to spend a week or ten days and would make inquiries if anybody was looking for a mine. No price was given, he took no maps with him, nor gave any names in connection with it, or the name of the mine. At that time Mr. McDaniel expressed the opinion the property might be worth \$300,000.00, but never said it could be sold for that.

When Mr. Gordon came to Cleveland in December, 1937, there was a discussion at which it was understood that if McDaniel sold the property he would have a commission of 10% of \$200,000.00, and 5% on anything above that.

(At this time Mr. Rowson showed to Mr. White a letter that he wrote to McDaniel on November 11, 1937. Whereupon a copy of this letter was introduced in evidence as Debtor's Exhibit No. 27). Reference was then made to a letter written by White

(Testimony of Mr. R. H. White.)

to Gordon on November 9, 1937, being Debtor's Exhibit No. 3.

He first thought of selling the Penelas property in 1937 when he came out and found that the mine was out of paying ore. Gordon estimated \$15,000.00 would be needed for development work to enable the mine to continue. He agreed to put this up, but because the venture so far had been such a bad one he was looking around for some way out and it occurred to him that a sale might be the best way out, but he did not mention this to Mr. Gordon, either at that time nor for six to nine months thereafter, until the letter of November 9, 1937 was written to Mr. Gordon.

Mr. McDaniel came to Cleveland of his own volition in October 1937 and [246] in the course of his visit White and McDaniel discussed the matter of selling, but the matter of the commission in the event that McDaniel sold the property was not discussed in October. He did not believe that he ever expressed the view that he was satisfied with the management of the mine. That at that time McDaniel expressed satisfaction, but White's reaction was still wobbly.

At the time White suggested Gordon should go to the clinic, Gordon recommended that Dynan be put on and that he (Dynan) could run the mine and that the mine would not suffer in Mr. Gordon's absence. During the casual visit of Mr. McDaniel to the

(Testimony of Mr. R. H. White.)

Penelas property in July, 1937, he expressed himself as being favorably impressed. He didn't remember that McDaniel ever made any direct criticism, but thought there were some things about the mine that he would have done differently. McDaniel has always been very friendly with Gordon. McDaniel never expressed any criticism of Gordon's management.

White was in Florida throughout the winter, going there in December and returning in the latter part of April. He did not have much correspondence with Gordon during the winter of 1937-38. He informed Gordon that he would be willing to take \$250,000.00 for his interest, notes and money the company owed to White. He was not willing to sell the stock interest of his family, plus the amount of the principal and interest owing him by the Penelas Mining Company for \$250,000.00, without further study of the situation regarding the value of the mine, and the further consideration of Gordon and Rowson being in control, which was very unsatisfactory to White. However, he would be willing to sell out cheaper than the mine might be worth because of the fact of the association of Rowson and Gordon. At the time [247] Gordon visited in Cleveland in December, 1937, he did not remember Gordon asking him to make an offer for Gordon's interest, but if Gordon did or had he would have refused to make any offer for Gordon's interest.

(Testimony of Mr. R. H. White.)

At the conference in Cleveland in May, Gordon requested White to make an offer for his interest and White refused. At the Cleveland conference in December, 1937 White did suggest to Gordon that he endeavor to have his (Gordon's) brother-in-law buy out White's interest, but he did not put any price on it in connection with Gordon's brother-in-law. He would be willing to dicker at any time with responsible people, but he would give no option at any price without further study of the situation. He had not formed an opinion as to whether or not he considered the Penelas mine a valuable property at the present time, and until a few days previously had not visited the property for a year. He was out of touch with the situation, except that Gordon was supposed to keep him posted. However, he thought Gordon's information was first hand.

Redirect Examination

By Mr. Thatcher:

At the time White wrote Gordon the "sell-out" letter of November 9th, McDaniel was in New York.

(It was then stipulated by and between counsel that it would not be necessary to call Mrs. Gordon in rebuttal, and that if she was present she would have said that she stated to White that Gordon was worried about the impendency of the notes and White told Mrs. Gordon to tell Gordon not to worry about the notes.) [248]

Rebuttal Testimony

MR. GORDON,

having been previously sworn, testified in substance as follows:

He was present at the time Mr. Higgins was testifying relative to Gordon's visit to Cleveland in May of 1938. That Mr. Little was not here in May at the time matters were discussed as to the salaries and various other things and the matter of the notes. Little was definitely not present. He came out here at the time the company was organized, not at the time these matters were discussed in May. He was here in the latter part of August, 1935. At the pre-organization conference, Mr. White, Rowson and Gordon were present.

Gordon went to Cleveland in May, 1938 at the suggestion of Little, who was in Reno at that time in May, 1938. He conferred with Little when Little was in Reno in May, 1938. The conference was to find out what White's attitude was and if there wasn't some chance to straighten the matter out. The conference covered two days and as a result of those conferences, Gordon went to Cleveland. When Gordon arrived in Cleveland White refused to see him at first but finally consented to meet him at his attorney's office. They went to Little's room, then Little placed a room at their disposal where Gordon and White had a short conversation.

Gordon told him of the mine conditions and of the ore on the 500 foot level. White told him to

(Testimony of L. D. Gordon.)

talk to the lawyers. White criticized Gordon for not writing him during the month of January and Gordon explained that Mrs. Gordon was in St. Mary's Hospital for two or three months as a result of a surgical operation and that was the reason for not writing White. White [249] then said "That is sob stuff, I am not interested in that. Talk to the lawyers". Gordon and White then went into Little's office again and into Mr. Higgins' office. White proposed that his salary be eliminated and that Gordon was to be retained as vice president but not as manager at a salary of \$500. a month; that there was no assurance whether that would be for one week or anything else. Gordon then told White that divided management would be a mistake, but White expressed the desire to put his own man in who would report direct to him. Gordon would not be allowed to sign the payroll checks.

Higgins dealt at great length on Gordon's physical condition and told him to take a vacation in order to save his face. However, Gordon did not want to be in a position of a pensioner and have nothing specific or definite. White, Higgins, Little and Gordon discussed the matter of the recent mine development. Later Gordon went to Higgins' home and Higgins advised him that he should do what White wanted him to do. Gordon did not think he would do it, but wanted to think it over. The next morning he told Higgins that he wished to go back to Nevada and discuss the matter with his wife,

(Testimony of L. D. Gordon.)

and that if there were any agreements to sign to send them either to Mr. Thatcher or himself, as Higgins told him that Mr. Thatcher had been retained. Gordon then left and came back to Nevada.

Mr. White appeared to be critical of the fact that Gordon hadn't written him as often as he should, but that White had gotten a statement of mill heads and tails and mill results every ten days during the months of November and December. He got the monthly statements that were made by the bookkeeper and was sent the auditor's report and the monthly statement of ore production.

He was also critical about the ore in sight, but Gordon [250] felt that it was rather difficult to make estimates every two weeks of ore in sight. Some companies only do that once a year. Gordon stated that the one period during January and February of 1938, he was disturbed over his wife's condition. Gordon did not recall any definite criticism on the part of White except that White thought Gordon was a bum estimator and had tried to discredit McDaniel and had discredited himself. White has no confidence in Gordon and called Mr. Rowson a crook. Gordon informed White that he had at no time tried to discredit some of his records. McDaniel told White that at the time the last money was put up by White in April, 1937 that White should have demanded more of Gordon's interest and also that McDaniel could get a man

(Testimony of L. D. Gordon.)

to manage the mine for much less salary that Gordon was getting. Nothing was said in the course of these conversations with reference to the estimated tonnage on the dump and in the mine, nor any conversation on the values of the ore on the dump as to whether the estimate was \$20.00 and the actual result \$10.00.

At the time the mill was started, Gordon estimated 15,000 tons available underground and 2,000 tons in the dump and that it did have an estimated value of \$20.00 but this was not mentioned in the Cleveland conversation of May, 1938, nor for over a period of a year prior to the Cleveland trip of May, 1938.

He did not agree with Mr. Higgins' statement that the stock was of value only as conferring voting control on Mr. White and had made no response to that statement. He was not permitted to do very much talking. During most of the conversation between White, Higgins and Little, Gordon was in an adjoining room, having been asked to leave the room. During the course of those conversations, Gordon did say that anybody might make a [251] mistake but denied that he had said that he had made mistakes in the management of the Penelas property. He did not contend that everything at the mine had always been one hundred percent; that he was not holding himself up as a paragon and perfect. He denied that he had received bad advice from Mr. Rowson and that he would not longer

(Testimony of L. D. Gordon.)

accept advice from Rowson, and that it had been Rowson's advice that had been largely responsible for this trouble. He denied saying that \$500.00 was not enough to be paid because of his family obligations. He did not recall saying that he knew the salary question had always been a mistake.

He denied that the Victor vein had been lost forever, but admitted that he had been unable to pick it up on the 300 and 400 levels, and that he had no visible results on the 300 or 400. At that time he told White about the latest development on the 500 level and also told Little but did not recall having any conversation about it with Higgins. In the absence of some reason for his removal, he **did not** wish to be discredited in his own state or in his profession without good reason. The delay in construction of the mill was because of parts which did not fit and the fact that the Diesel had to be hauled into the Sparks shops and that there was some delay in receiving machinery from various sources over which he had no control. This was the reason for the additional time required.

At this time, Mr. Thatcher made the following statement for the record:

“At this time I would like to make a statement for Mr. White, that we correct Mr. White's statement in his testimony, that Mr. Little was present here on May 1st, or immediately preceding that date, at the time when the contract between the parties was executed and when the discussion came up as to the [252] maturity of the notes. Mr. Little

(Testimony of L. D. Gordon.)

was here in August, or immediately preceding the organization of the company and was not present in May, at the time of the execution of the contract or at the time the discussion came up and final agreement was arranged as to the maturity of the notes, arranged with Mr. White.”

The only parties present at the conference were Gordon, White and Rowson.

Mr. Gordon resumed the witness stand on further

REBUTTAL TESTIMONY

By Mr. Rowson:

and testified as follows:

\$500.00 a month was not top salary for the management of the operation of that kind, (referring to the Penelas Mining Company), and that a minimum of \$500.00 for that kind of an operation was usual. A proper salary would probably be \$700.00 or \$800.00.

On an average there are about 35 men employed at the Penelas Mine and mill. In the Spring of 1937 there was no discussion about selling the mine. At that time Mr. White advanced another \$15,000 at his own suggestion, saying that he didn't think enough development work had been done. The money was spent for raising the shaft in the 300 and 400 and doing work to the south that resulted in picking up the Victor ore body, and doing some work on the Combination Bonanza about a mile north of the Penelas shaft.

(Testimony of L. D. Gordon.)

(Mr. Rowson then offered copies of letters and wires and one original letter, being a copy of a letter from A. K. McDaniel to Mr. White dated August 7, 1937, original letter from White to Gordon dated December 6, 1937, and copy of a letter from Gordon to White dated December 16, 1937, and copy of a wire from Gordon to White dated March 3, 1938. They were [253] admitted in evidence as part of Debtor's Exhibit No. 25.

He also offered a copy of a letter from L. D. Gordon to J. C. Little dated April 27, 1938, the same being included as part of Debtor's Exhibit No. 26).

That at no time since the organization of the company had Mr. White as president requested that an annual meeting of the company and its directors be held nor was there any request ever made for the holding of a special meeting for the purpose of electing a director to replace Rowson. Whereupon Rowson admitted he had not resigned.

Cross Examination

By Mr. Thatcher:

At the time the \$15,000.00 for development was advanced the accounts payable were not in especially good shape, some of them were sixty days or more due. White later advanced a total of \$20,000.00, \$15,000.00 for the work he spoke of and later \$5,000.00. White wanted to keep the credit good and would put up this money to pay off bills payable. [254]

Attached hereto and made a part hereof are full, true and correct copies of all of Intervener's Exhibits hereinbefore mentioned, and all of Debtor's Exhibits hereinbefore mentioned, save and except Debtor's Exhibits Nos. 1, 16, 17 and 18. Debtor's Exhibit No. 1 is a map, and Debtor's Exhibits Nos. 16, 17 and 18 are photographs. It is necessary and proper that the originals of Debtor's Exhibits Nos. 1, 16, 17 and 18 be sent to the United States Circuit Court of Appeals for the Ninth Circuit for the inspection of that court.

Wherefore, Interveners and Appellants herein pray that this Statement of Evidence, together with the originals of Debtor's Exhibits 1, 16, 17 and 18, be settled, approved and allowed by the above entitled Court as a true, full and correct and complete statement of all the evidence taken and given on the trial of said cause for use on the appeal taken to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: This 14th day of October, 1938.

GEO. B. THATCHER,

WM. WOODBURN,

WM. J. FORMAN,

Attorneys for Interveners
and Appellants.

[Endorsed]: Lodged Oct. 15, 1938. Filed Nov. 26,
1938. [255]

The foregoing Statement of Evidence, together with the originals of Debtor's Exhibits 1, 16, 17 and 18, is in all respects hereby approved and settled as a true and correct statement of the evidence adduced on the trial of the above entitled action.

Dated: This 26th day of November, 1938.

FRANK H. NORCROSS,

United States District Judge.

[Endorsed]: Filed Nov. 26, 1938. [256]

INTERVENER'S EXHIBIT A
PENELAS MINING COMPANY

SEVEN MONTHS—OCTOBER 1, 1937 to APRIL 30, 1938

INCOME & EXPENSE

Income—

Sale of Bullion.....	\$118,545.00	
Sale of Iron & Slag.....	4,445.24	
Iron & Slag on Hand, April 30, 1938.....	579.16	

\$123,569.40

\$11.763

Expense—

Stopping Operations (Ore Extraction).....	27,824.37	(\$2,648)
Milling Operations.....	27,764.61	2,643)

55,588.98

5.291

Gross Operating Profit.....

\$67,980.42

\$6.472

INTERVENER'S EXHIBIT "A" (Continued)

Development Operations	17,203.49(	1,638)
Shaft Extension—		
Balance—300' level to 400'	687.35	
400' level to 500'	2,495.46	
500' to 600' (Preliminary)	203.48	
	<hr/>	
	3,386.29(	.322)
	<hr/>	
	20,589.78	(1,960)
Administrative—		
Executive Salaries	7,359.45(	.701)
Office Employees	2,546.39(	.242)
Postage, Telephone, Telegraph, Lights, etc.	685.00(	.065)
Auditing—pro-rata	203.15(	.019)
	<hr/>	
	10,793.99	(1,027)
	<hr/>	
	31,383.77	2,987
	<hr/>	
Profit before Provision for Interest, Taxes & other Non-operating Charges	\$ 36,596.65	\$3,485

INTERVENER'S EXHIBIT "A" (Continued)

Non-operating Charges—			
Interest	4,966.76 (	.473)	
Traveling	691.88 (	.065)	
Insurance	753.43 (	.072)	
Taxes—			
Property	974.60 (	.093)	
Capital Stock	406.48 (	.088)	
Bullion	1,284.36 (	.122)	
Payroll (Soc. Security)	2,105.95 (	.201)	.454)
	<hr/>		<hr/>
	4,771.39		(1.064)
	<hr/>		
	11,183.46		
	711.79		(.068)
Less: Profit, Boarding-house, etc.....	10,471.67		.996
	<hr/>		<hr/>
Net Profit, after all Deductions.....	\$26,124.98		\$2,489

Tons of Ore Milled—10,505

(All figures in paranthesis on exhibit written in pen and ink)

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Intervener's Exhibit No. "A"
 Filed June 30th, 1938. O. E. Benham, Clerk. By, Deputy.

[257]

INTERVENER'S EXHIBIT B

Western Union

1938 May 20 AM 8 51

FA66 16 XC-AK Airport Cleveland Ohio 20 1130A

Walter Rowson

E C Lyon Bldg Reno Bldg Reno Nev

I Have Done Everything Humanly Possible But No
 Sale Arrive Eleven Twenty Tonight Please Advise
 Helen

L D GORDON

[Endorsed]: No. A-30-A. U. S. Dist. Court, Dis-
 trict of Nevada. Int. Exhibit No. "B". Filed June
 30th, 1938. O. E. Benham, Clerk. By _____,
 Deputy. [258]

INTERVENER'S EXHIBIT C

Western Union

May 20th, 1938.

L. D. Gordon,

c/o United Airlines Transport Corp,

Westbound Plane Arriving Denver 5:48 P. M.,

Denver, Colorado.

Have Everything Ready File Petition Federal Court
 Romorrow and Meet You Reno Airport.

WALTER ROWSON.

[Endorsed]: No. A30-A. U. S. Dist. Court, Dis-
 trict of Nevada. Intervener's Exhibit No. "C".
 Filed June 30th, 1938. O. E. Benham, Clerk. By
 _____, Deputy. [259]

INTERVENER'S EXHIBIT D

PENELAS MINING COMPANY

Monthly Statement of Operating Results for the Period
May 1, 1937 to April 30, 1938

	Tons of Ore Milled	Payment by Smelter Per Ton	Operating Costs Per Ton	Net Profit or Loss Per Ton
1937				
May	1,320	\$ 7.202	\$10.202	\$3.00 (red)
June	1,263	10.82	11.539	.719 (red)
July	1,120	11.197	12.543	1.346 (red)
August	1,384	12.587	10.193	2.394
September	1,167	12.038	12.306	.268 (red)
October	1,377	15.372	10.629	4.743
**November	1,425	16.107	9.076	7.031
December	1,656	11.961	8.368	3.593
1938				
January	1,603	10.630	9.093	1.537
February	1,417	9.325	9.672	.347 (red)
March	1,493	7.627	9.512	1.885 (red)
April	1,534	9.550	8.705	.845

**In the month of November slag was shipped and sold to the amount of \$3,348.15, making total gross receipts ~~\$26,301.53~~. This was an accumulation of several months (26,302.03) past.

Note: No provision or deduction is made for depreciation or depletion.

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Intervener's Exhibit No. "D" Filed July 1st, 1938. O. E. Benham, By, Deputy.

[260]

INTERVENER'S EXHIBIT E
PENELAS MINING COMPANY

Summary of Operations
For Fiscal Year Ending November 30, 1937

(See Annual Report—Pages 4 and 5)

	Values Recovered	Tons Milled	Value Per Ton
December	\$17,029.04	1,434	\$11.875
January	13,418.58	1,329	10.097
February	10,032.35	1,263	7.943
March	10,971.59	1,404	7.814
April	9,066.86	1,229	7.377
May	9,507.77	1,320	7.203
June	13,666.06	1,263	10.820
July	12,541.61	1,128	11.118
August	17,420.79	1,384	12.587
September	14,048.58	1,167	12.038
October	21,167.64	1,377	15.372
November	22,953.88	1,425	16.108
	\$171,824.75	15,723	\$10.928
Iron and slag			
Shipments:			
January	\$4,435.15		
Less Inventory			
Nov. 30/36	2,907.85		
	1,527.30		
April	1,051.88		
November	3,004.40		
Inventory			
Nov. 30/37	343.75	5,927.33	
Total	\$177,752.08	15,723	\$10.928

Penelas Mining Company

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	<u>Amount</u>	<u>Per Ton</u>
Values recovered	\$177,752.08	\$11.305
Operating expense	123,456.56	7.852
	<hr/>	<hr/>
Gross Profit	54,295.52	3.453
Administrative and general.....	27,526.07	1.751
	<hr/>	<hr/>
Operating Profit	\$26,769.45	\$1.702
Non-operating expense—net.....	5,183.57	.330
	<hr/>	<hr/>
Profit before Interest and Depreciation	\$21,585.88	1.372
Interest	7,848.88	.499
	<hr/>	<hr/>
Profit before Depreciation.....	<u>\$13,737.00</u>	<u>.873</u>

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Intervener's Exhibit No. "E" Filed July 1st, 1938. O. E. Benham, Clerk. By _____, Deputy.

[261]

INTERVENER'S EXHIBIT F

Report of Examination Penelas Mining Company,
Fallon, Nevada, November 30, 1936.

Report From
Ernst & Ernst
Audits and Systems

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Buildings, Machinery, Equipment, etc.

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General and Administrative Expense Capitalized.

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Ernst & Ernst

Accountants and Auditors

System Service

San Francisco

914 Russ Building

January 16, 1937

Penelas Mining Company,

Fallon, Nevada.

We have made an examination of the balance sheet of Penelas Mining Company as at November 30, 1936 and of the statement of income and expense from the beginning of operations on February 1, 1936 to November 30, 1936. In connection therewith we examined or tested the accounting records of the Company and other supporting evidence, and obtained information and explanations from officers and employees of the Company. We also made a general review of the accounting methods and of the operating and income accounts for the year, but we did not make a detailed audit of the transactions.

A condensed summary of the assets and liabilities of the Company at the close of business, November 30, 1936 and November 30, 1935 is presented below in comparative form:

Penelas Mining Company

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<u>Assets</u>	Nov. 30, 1936	Nov. 30, 1935	Increase Decrease (red)
Cash	\$ 1,918.36	\$ 643.27	\$ 1,275.09
Bullion, iron and slag.....	10,879.53	—	10,879.53
Inventories	4,677.26	103.70	4,573.56
Other assets	727.28	960.12	232.84(red)
Mine claims and develop- ment	179,151.83	186,453.85	7,302.02(red)
Land, buildings, machinery, equipment, etc.	127,852.07	103,256.35	24,595.72
Deferred	2,049.51	1,590.74	458.77
	<u>\$327,255.84</u>	<u>\$293,008.03</u>	<u>\$34,247.81</u>
 <u>Liabilities</u> 			
Accounts payable	\$ 24,217.77	\$ 22,525.33	\$ 1,692.44
Accrued	11,775.21	1,518.31	10,256.90
Officers' salaries	6,918.51	3,964.39	2,954.12
Lease and option.....	9,783.75	25,000.00	15,216.25 (red)
Notes payable	120,000.00	90,000.00	30,000.00
Capital stock and surplus.....	154,560.60	150,000.00	4,560.60
	<u>\$327,255.84</u>	<u>\$293,008.03</u>	<u>\$34,247.81</u>

(Note) Mine claims and development and other permanent assets are not strictly comparable, due to the necessity for a limited reclassification between the two classifications, and also due to deduction of provision for depletion and depreciation for the ten months ended November 30, 1936.

Operations began on February 1, 1936, and for the period from February 1, 1936 to November 30, 1936 operations resulted in a net profit of \$4,560.60 after provision for depreciation, depletion and Federal income tax. Due to delays in putting the shaft and hoist in operating condition, it was necessary to operate the mill on ore accumulated in the ore dump

during development until the middle of April when underground operations began. In connection with the statement of income and expense as presented, we wish to point out the following: [265]

1. Operations were not charged with any value attaching to ore in ore dump upon beginning operations.
2. Operations have not been credited with pre-paid mining costs attaching to ore in stopes, nor has consideration been given to the value of ore in bins or in solution at the close of the operating period.

Statement of income and expense hereinafter included in greater detail is presented in summarized form, as follows:

	<u>Amount</u>	<u>Per Ton</u>
Values recovered	\$135,458.69	\$10.935
Operating expenses	80,609.94	7.573
	<hr/>	<hr/>
Operating Profit	\$ 54,848.75	\$ 3.362
General and administrative expense.....	20,160.46	1.627
	<hr/>	<hr/>
Net Profit from Operations.....	\$ 34,688.29	\$ 1.735
	<hr/>	<hr/>
Other deductions	\$ 8,907.30	
Less: Other income.....	151.73	8,755.57
	<hr/>	
		\$ 25,932.72
Depreciation	\$15,833.19	
Depletion	4,869.39	20,702.58
	<hr/>	
		\$ 5,230.14
Provision for Federal income tax.....	669.54	
	<hr/>	
Net Profit	\$ 4,560.60	
	<hr/>	

Per ton operating results for values recovered, milling expense and general and administrative expense have been computed on the basis of 12,387.8 tons of ore milled, while per ton stoping expense has been computed on the basis of 9,482 tons of ore mined and milled. Following is a tabulation of values recovered by months:

	Values Recovered	Tons Milled	Value Per Ton
February	\$ 6,261.63	1,145	\$ 5.469
March	9,513.77	1,087.8	8.746
April	4,963.21	987	5.029
May	12,407.53	1,160	10.696
June	12,347.08	1,214	10.171
July	18,691.73	1,328	14.075
August	15,961.81	1,316	12.129
September	16,542.76	1,381	11.979
October	19,658.07	1,402	14.021
November	16,203.25	1,367	11.853
	\$132,550.84	12,387.8	\$10.700
Iron and slag.....	2,907.85		235
	\$135,458.69	12,387.8	\$10.935

[266]

Our comments relative to the principal item of the balance sheet hereinafter included in this report, and to the scope of our examination, follow:

Cash on hand was accounted for. Cash on deposit at November 30, 1936 was verified by direct correspondence with the depository bank and reconciliation of the amounts so reported with the balances shown on the Company's books. Recorded cash disbursements for the months of March and November, 1936 were supported by examination of cancelled checks, invoices, pay rolls and other data. Recorded

cash receipts for the same months were traced into bank deposits as evidenced by bank statements on file.

Bullion on hand in the amount of \$7,971.68 represents the clean-up of precipitates on November 30, 1936, and is valued at the net amount received from the smelter as shown by the smelter return. Gross value of the bullion has been included in gold and silver recovered in the statement of income and expense. Iron and slag on hand in the amount of \$2,907.85 represents the net value of gold and silver contained in the ball mill iron and slag accumulated. The value of iron and slag on hand has been computed from data relative to weight and assay submitted by the mill superintendent and from smelter schedules, less all charges.

Supplies inventories in the aggregate amount of \$4,677.26 are stated as taken and priced under the direction of the management, and test checked by us as to arithmetical accuracy of extensions and footings and a price basis of cost.

Other assets, in the aggregate amount of \$727.28 include deposits and accounts and were satisfactorily accounted for by us.

Mine and mining claims are stated in the aggregate amount of \$154,613.51 which includes the excess of the par value of capital stock issued over the net assets acquired from the predecessor partnership (at cost of acquisition to the partnership) in the amount of \$102,000.00. Charges to this account during the period under examination were verified by inspection of quitclaim deed to claims acquired and other data.

Expenditures in connection with sinking a shaft and for underground development of drifts and raises have been capitalized under the classification of Mine, Claims, and Development. Receipts from shipments of ore extracted during the course of development have been treated as a reduction of the cost of drifts and raises. General and administrative expenses to February 1, 1936 were capitalized under this caption, but upon the completion of development and construction work these expenses were prorated to shaft, drifts and raises, buildings and structures, machinery and equipment and pipe and power lines inasmuch as these expenses represent additional cost of development and construction. No data is available with reference to ore reserves which would enable us to compute provision for depletion. The Company has elected to compute provision for depletion for Federal income tax purposes on a percentage basis as allowed by income tax regulations. The provision for depletion is computed at 15% of gross receipts provided depletion so computed does not exceed 50% of net income before deducting depletion. Provision for depletion as computed for Federal income tax purposes amounted to \$4,869.39 and is so stated in the annexed balance sheet and statement of income and expense.

Land, buildings, machinery, equipment, etc., are stated at depreciated cost value, and are without inventory or appraisal by us. Additions to these accounts during the year under review were supported by examination of invoices, pay roll records and other data on file. Shortly after the beginning

of operations on February 1, 1936, machinery and equipment was inventoried by the management, and such machinery and equipment as had been consumed in development was removed from that account and charged to drifts and raises. Allowance for depreciation has been computed from February 1, 1936, the date of commencement of operations. The estimated life of depreciable assets shown [267] under the caption of Land, Buildings, Machinery, Equipment, etc., has been determined after discussion with the management and depreciation has been calculated from the date of commencing operations, February 1, 1936, or if later acquired, from the date of acquisition to November 30, 1936. Buildings, Machinery and equipment located at the mine were considered to have a maximum life of ten years inasmuch as it was pointed out that other productive mines located in that area have had an average productive life of nine or ten years.

Deferred charges consist of organization expense, prepaid taxes and unamortized portion of insurance premiums, and were verified by inspection of insurance policies, invoices and other data.

Full provision for all ascertained indebtedness of the Company has been made under appropriate captions, as disclosed by the records examined and information obtained by us.

Accounts payable for purchases and expenses in the amount of \$17,791.84 were verified by trial balance of unpaid vouchers and comparison of balances with creditors' statements and invoices. Unpaid invoices have been aged as to date of charge, as follows:

November, 1936 invoices.....	\$ 4,524.80
October, 1936 invoices.....	6,831.77
September, 1936 and prior invoices.....	6,435.27
	<hr/>
Total.....	<u>\$17,791.84</u>

Unpaid pay roll in the amount of \$4,811.02 represents the unpaid portion of the pay roll for the month of November, 1936. Other accounts payable for taxes and compensation insurance also were satisfactorily verified.

Accrued liabilities for interest, taxes and insurance were computed by us from various invoices and data on file.

Salaries payable to Messrs. White and Gordon represent the unpaid balances of salaries at the rates of \$250.00 and \$800.00 per month, respectively. Both officers have acknowledged in writing the correctness of balances due them at the close of business November 30, 1936.

Unpaid balance of lease and option and existence of two quitclaim deeds covering the Leader Group of mining claims, executed by the Administrator of the Estate of Silverino Penelas, which has been placed in escrow with the First National Bank in Reno, Reno, Nevada were confirmed by correspondence with that bank. The unpaid balance at November 30, 1936 in the amount of \$9,783.75 is payable in monthly installments equal to 10% of gross receipts, which installments must aggregate at least \$5,000.00 by April 1, 1937 and the remainder is payable in the same manner by August 1, 1937.

Notes payable to stockholders in the amount of

\$120,000.00 were confirmed by correspondence with the holders thereof. All of the notes bear interest at the rate of 6% per annum and mature as shown by an exhibit included hereinafter in this report. Interest accrued on notes payable to November 30, 1936 in the total amount of \$8,673.24 has been provided for. An agreement entered into on May 1, 1935 between L. D. Gordon and R. H. White as a basis for incorporating the Company, provides that no dividends may be declared until all loans made to the Company have been repaid. Further, the agreement provides that should Mr. White make additional loans for payment of the purchase price of the Leader Group of mining claims he shall be entitled to receive as security a first mortgage on all claims acquired. We were informed that at the date of our examination Mr. White had not exercised his right of taking a first mortgage on the mining claims. [268]

Outstanding capital stock as at November 30, 1936 was verified by trial balance of stock certificate stubs. Stockholders of record at that date were as follows:

	<u>Shares</u>
L. D. Gordon.....	75,000
E. W. King.....	18,750
R. H. White, Jr.....	18,750
W. K. White.....	18,750
K. K. White.....	9,375
R. H. White.....	9,375
	<hr/>
Total.....	150,000
	<hr/> <hr/>

Fire insurance coverage carried by the Company may be summarized as follows:

	<u>Buildings</u>	<u>Contents</u>
Mine and mill.....	\$17,800.00	\$11,200.00
Mine office, boarding house and residences	14,000.00	1,300.00
Fallon office	2,000.00	1,000.00
	<hr/>	<hr/>
Total.....	<u>\$33,800.00</u>	<u>\$13,500.00</u>

Fire, theft, collision and public liability insurance are carried on automobile and trucks and property damage insurance on automobiles only. Precipitates or bullion in transit are insured under a reporting policy and Mr. James, Assistant Secretary-Treasurer, is covered by a surety bond in the amount of \$10,000.00.

In our opinion, based upon our examination, the accompanying balance sheet and related statement of income and expense fairly present in accordance with accepted accounting principles, the financial condition of the Company at November 30, 1936, and the results of its operations for the period from February 1, 1936 to November 30, 1936.

[Seal]

/s/ ERNST & ERNST

Certified Public Accountants.

Audits-Systems

Ernst and Ernst

San Francisco. [269]

BALANCE SHEET
PENELAS MINING COMPANY—FALLON NEVADA

At the close of business November 30, 1936

Assets		
Cash		
On hand	\$ 22.58	
On deposit	1,895.78	\$ 1,918.36
Bullion, Iron and Slag		
Bullion on hand.....	\$ 7,971.68	
Iron and slag on hand.....	2,907.85	10,879.53
Inventories		
Repair parts and supplies.....	\$ 2,116.28	
Gasoline, fuel oil and lubricants.....	1,030.44	
Explosives	705.90	
Mill and assay supplies.....	468.09	
Boarding house	356.55	4,677.26
Other Assets		
Compensation insurance deposit.....	\$ 377.17	
Gasoline tax refund receivable.....	169.72	
Deposit on freight.....	125.00	
Accounts receivable for advances.....	55.39	727.28
Mine, Claims and Development		
Mine and mining claims.....	\$154,613.51-A	
Expenditures in connection with application for water rights.....	86.56	
Shaft	20,321.49	
Drifts and raises.....	8,999.66	\$184,021.22
Less: Allowance for depletion.....	4,869.39-B	179,151.83
Land, Buildings, Machinery, Equipment, etc.		
Real estate at Fallon	\$ 400.00	
Buildings and structures.....	54,230.83	
Machinery, equipment, tools, etc.....	78,079.97	
Pipe and power lines.....	7,579.48	
Automobile and trucks.....	2,404.80	
Roads	414.50	
\$142,709.58		
Less: Allowance for depreciation.....	15,257.51	127,452.07
Deferred		
Organization expense	\$ 1,077.54	
Prepaid and deferred taxes.....	509.66	
Unexpired portion of insurance premiums.....	462.31	2,049.51
		\$327,255.84



Accounts Payable		
For purchases, expenses, etc.....	\$ 17,791.84	
Unpaid pay roll.....	4,811.02	
For taxes on real and personal property.....	1,269.59	
Compensation insurance	345.32	\$ 24,217.77
	<hr/>	
Accrued		
Interest on notes payable.....	8,673.24	
State Bullion tax.....	921.40	
Federal unemployment tax.....	741.41	
Federal capital stock tax.....	705.00	
Federal income tax.....	669.54	
Insurance	64.62	11,775.21
	<hr/>	
Officers' salaries		
R. H. White.....	4,466.07	
L. D. Gordon.....	2,452.44	6,918.51
	<hr/>	
Lease and Option		
Estate of Silverino Penelas—Due in monthly installments equal to 10% of gross revenues to aggregate at least \$5,000.00 by April 1, 1937 and balance by August 1, 1937.....		9,783.75A
Notes Payable to Stockholders		
R. H. White.....	\$ 60,000.00	
K. K. White.....	60,000.00	120,000.00C
	<hr/>	
Capital Stock and Surplus		
Capital Stock (Par value \$1.00 per share)		
Authorized and issued 150,000 shares.....	\$150,000.00	
Earned Surplus		
Net profit from operations for the period from February 1, 1936 to November 30, 1936 as shown by Statement of Income and Expense	4,560.60	154,560.60
	<hr/>	
		<u>\$327,255.84</u>

(Note A) Claims comprising the Leader Group and acquired from the Estate of Silverino Penelas are held in escrow as security for unpaid portion of purchase price.

(Note B) Allowance for depletion has been computed on a percentage basis as allowable for Federal income tax purposes.

(Note C) An agreement exists prohibiting the payment of dividends until notes payable to stockholders are paid. The same agreement provides that the note holders may take a first mortgage on mining claims as security for their loans, but such right had not been exercised at November 30, 1936.

(Note D) This balance sheet is subject to the appended comments and should be read in connection therewith.



PENELAS MINING COMPANY—FALLON, NEVADA
For the period from February 1, 1936 to November 30, 1936.

	Amount		Per Ton of Ore	
Income				
Values Recovered				
Gold (3,480.816 fine ozs.).....	\$120,891.51		\$9.759	
Silver (15,243.35 fine ozs.).....	11,659.33	\$132,550.84	.941	\$10.700
Iron and slag.....		2,907.85		.235
		\$135,458.69		\$10.935
Expense				
Operating Expense				
Stoping	\$ 43,100.92		\$4.545	
	37,509.02	80,609.94	3.028	7.573
Operating Profit		\$ 54,848.75		\$ 3.362
General and Administrative Expense		20,160.46		1.627
Net Profit from Operations.....		\$ 34,688.29		<u>\$ 1.735</u>
Other Deductions				
Interest	\$ 6,166.59			
Camp residences	1,168.34			
Boarding house	1,052.18			
General camp maintenance.....	479.69			
Donations	40.50	8,907.30		
		\$ 25,780.99		
Other Income				
Profit on purchases for employees.....	\$ 146.83			
Discounts taken	4.90	151.73		
Net Profit before Providing for Depreciation, Depletion and Federal Income Tax		\$ 25,932.72		
Depreciation	\$ 15,833.19			
Depletion	4,869.39	20,702.58		
Net Profit before Providing for Federal Income Tax		\$ 5,230.14		
Provision for Federal Income Tax.....		669.54		
Net Profit		<u>\$ 4,560.60</u>		



OPERATING EXPENSES

PENELAS MINING COMPANY—FALLON, NEVADA

For the period from February 1, 1936 to November 30, 1936

	Salaries and Wages	Materials Supplies Expense	Total	Cost Per Ton
Stopping Expense (9,482 tons)				
Mining	\$ 7,875.75	\$ 9.07	\$ 7,884.82	\$.831
Mucking and tramping.....	5,446.15	62.03	5,508.18	.581
Timbering	3,590.42	2,005.45	5,595.87	.477
Compressor	657.35	3,867.75	4,525.10	.477
Explosives	—	3,819.73	3,819.73	.403
Hoisting	2,478.64	971.67	3,450.31	.364
Repairs and maintenance.....	1,318.54	1,731.20	3,049.74	.322
Superintendence	2,750.00	—	2,750.00	.290
Track and pipe lines.....	1,330.97	138.13	1,469.10	.155
Blacksmith shop	1,250.18	211.68	1,461.86	.154
Compensation insurance	—	1,451.17	1,451.17	.153
Assaying	733.44	507.11	1,240.55	.131
Materials and supplies.....	—	967.01	967.01	.102
Engineering	710.55	159.63	870.18	.091
Ventilation	39.03	254.27	293.30	.031
Unemployment taxes	—	281.78	281.78	.030
Less: Mucking and tramping from ore dump.....	\$28,181.02	\$16,437.68	\$44,618.70	\$4.705
			1,517.78	.160
Total.....			\$43,100.92	\$4.545
Milling Expense (12,387.8 tons)				
Milling	\$ 8,796.90	—	\$ 8,796.90	\$.710
Supplies—chemicals, balls, etc.....	—	7,813.66	7,813.66	.631
Power	857.63	5,133.08	5,990.71	.484
Repairs and maintenance.....	1,565.90	2,001.84	3,567.74	.288
Superintendence	2,125.00	—	2,125.00	.172
Water	1,302.53	457.19	1,759.72	.142
Assaying	733.43	507.10	1,240.53	.100
Taxes	—	1,058.00	1,058.00	.085
Crushing	1,039.95	—	1,039.95	.084
Smelter charges, express, etc.....	—	824.59	824.59	.067
Compensation insurance	—	777.68	777.68	.063
Insurance	—	484.46	484.46	.039
Refining	42.14	305.51	347.65	.028
Unemployment taxes	—	164.65	164.65	.013
	\$16,463.48	\$19,527.76	\$35,991.24	\$2.906
Mucking and tramping from ore dump.....			1,517.78	.122
Total.....			\$37,509.02	\$3.028
Total Operating Expense.....	\$44,644.50	\$35,965.44	\$80,609.94	\$7.573



GENERAL AND ADMINISTRATIVE EXPENSE

PENELAS MINING COMPANY—FALLON, NEVADA

For the period from February 1, 1936 to November 30, 1936

(12,387.8 tons)	Amount	Cost Per Ton
Salaries—executive	\$10,500.00	\$.848
do. —Fallon office	2,500.00	.202
do. —Mine office	1,283.55	.104
Taxes:		
Federal capital stock taxes.....	\$1,003.75	
State bullion taxes.....	921.40	
Real estate taxes.....	22.66	1,947.81
	1,286.96	.104
Undistributed portion of trucking expense.....		
Traveling	919.85	.074
Office supplies and expense.....	463.46	.037
Insurance	387.92	.031
Telephone and telegraph.....	246.57	.020
Repairs and maintenance.....	232.38	.019
Unemployment taxes	142.57	.012
Legal fees	115.00	.009
Postage	104.39	.008
Dues and subscriptions.....	30.00	.002
	<u>\$20,160.46</u>	<u>\$ 1.627</u>

OTHER DEDUCTIONS

PENELAS MINING COMPANY—FALLON, NEVADA

For the period from February 1, 1936 to November 30, 1936

Interest		
On notes payable.....	\$ 6,124.60	
On smelter advances.....	41.99	\$6,166.59
<hr/>		
Camp residences		
Fuel	\$ 755.36	
Labor	130.54	
Insurance	103.40	
Unemployment taxes and compensation insurance	8.32	
Other expenses	170.72	1,168.34
<hr/>		
Boarding House		
Food, fuel, etc.....	7,651.87	
Labor	1,717.94	
Unemployment taxes and compensation insurance	16.38	
	\$9,386.19	
Less: Revenue	8,334.01	1,052.18
<hr/>		
General Camp Maintenance		
Labor	\$ 425.86	
Unemployment taxes and compensation insurance	26.05	
Other expenses	27.78	479.69
<hr/>		
Donations		40.50
<hr/>		
Total.....		\$8,907.30
<hr/>		
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BUILDINGS, MACHINERY, EQUIPMENT, ETC.
 PENELAS MINING COMPANY—FALLON, NEVADA
 November 30, 1936

	Buildings and Structures			Machinery, Equipment, Tools, Etc.			Total Net Book Value
	Cost	Allowance for Depreciation	Net Book Value	Cost	Allowance for Depreciation	Net Book Value	
Mill and Mine							
Mill, crusher and ore bins.....	\$22,329.08	\$ 1,860.73	\$20,468.35	\$33,959.84	\$ 2,829.93	\$31,129.91	\$51,598.26
Power plant	1,016.77	84.72	932.05	13,689.22	1,613.50	12,075.72	13,007.77
Pumping plant	299.96	24.99	274.97	6,776.71	536.91	6,239.80	6,514.77
Assay of fine.....	1,186.16	98.85	1,087.31	1,558.04	242.90	1,315.14	2,402.45
Blacksmith shop	305.60	25.46	280.14	480.63	122.45	358.18	638.32
Warehouses	1,528.98	127.41	1,401.57	—	—	—	1,401.57
Machine shop	299.67	24.98	274.69	313.48	52.26	261.22	535.91
Mining	—	—	—	3,430.71	667.22	2,763.49	2,763.49
Hoist	1,936.22	161.37	1,774.85	5,075.99	1,102.37	3,973.62	5,748.47
Compressor	—	—	—	4,487.14	865.20	3,621.94	3,621.94
Track and pipe in mine.....	—	—	—	1,612.26	134.35	1,477.91	1,477.91
Ventilation	—	—	—	515.70	74.30	441.40	441.40
Small tools	—	—	—	785.26	218.27	566.99	566.99
In storage	—	—	—	1,229.45	66.97	1,162.48	1,162.48
Refinery	510.08	42.51	467.57	612.45	133.13	479.32	946.89
Charge room	777.14	64.76	712.38	—	—	—	712.38
Telephone system	—	—	—	88.44	2.95	85.49	85.49
Carpenter and electrical shop under construction	143.17	—	143.17	—	—	—	143.17
	<u>\$30,332.83</u>	<u>\$ 2,515.78</u>	<u>\$27,817.05</u>	<u>\$74,615.32</u>	<u>\$ 8,662.71</u>	<u>\$65,952.61</u>	<u>\$93,769.66</u>
Offices							
Penelas	\$ 1,668.45	\$ 139.03	\$ 1,529.42	\$ 273.16	\$ 32.04	\$ 241.12	\$ 1,770.54
Engineering	—	—	—	259.51	16.57	242.94	242.94
Hospital	—	—	—	99.76	8.31	91.45	91.45
Fallon	2,437.17	101.55	2,335.62	649.25	70.87	578.38	2,914.00
	<u>\$ 4,105.62</u>	<u>\$ 204.58</u>	<u>\$ 3,865.04</u>	<u>\$ 1,281.68</u>	<u>\$ 127.79</u>	<u>\$ 1,153.89</u>	<u>\$ 5,018.93</u>
Residential							
Boarding house	2,062.44	171.87	1,890.57	524.97	87.50	437.47	2,328.04
Residences	17,729.94	1,477.53	16,252.41	1,658.00	138.17	1,519.83	17,772.24
	<u>\$19,792.38</u>	<u>\$ 1,649.40</u>	<u>\$18,142.98</u>	<u>\$ 2,182.97</u>	<u>\$ 225.67</u>	<u>\$ 1,957.30</u>	<u>\$20,100.28</u>
Total	<u>\$54,230.83</u>	<u>\$ 4,405.76</u>	<u>\$49,825.07</u>	<u>\$72,404.35</u>	<u>\$10,169.40</u>	<u>\$62,235.40</u>	<u>\$123,540</u>
Roads				414.50	34.54	379.96	379.96
Grand Total	<u>\$54,230.83</u>	<u>\$ 4,405.76</u>	<u>\$49,825.07</u>	<u>\$88,478.75</u>	<u>\$10,851.75</u>	<u>\$77,627.00</u>	<u>\$127,452.07</u>

NOTES PAYABLE TO STOCKHOLDERS

PENELAS MINING COMPANY—FALLON, NEVADA

November 30, 1936

Date	Date Due	R. H. White	K. K. White
1-13-36	1-13-37	\$ 1,250.00	\$ 1,250.00
1-21-36	1-21-37	1,500.00	1,500.00
1-30-36	1-30-37	3,500.00	3,500.00
3-28-36	3-28-37	2,500.00	2,500.00
3-10-35	9-10-37	2,000.00	2,000.00
5- 1-35	11- 1-37	1,500.00	1,500.00
5-15-35	11-15-37	1,500.00	1,500.00
6-25-35	12-25-37	5,000.00	5,000.00
7-25-35	1-25-38	10,000.00	10,000.00
8-22-35	2-22-38	2,500.00	2,500.00
9- 1-35	3- 1-38	5,000.00	5,000.00
9-22-35	3-22-38	5,000.00	5,000.00
10-23-35	4-23-38	5,000.00	5,000.00
11-12-35	5-12-38	5,000.00	5,000.00
11-20-35	5-20-38	2,500.00	2,500.00
12- 5-35	6- 5-38	6,250.00	6,250.00
Total.....		<u>\$60,000.00</u>	<u>\$60,000.00</u>

GENERAL AND ADMINISTRATIVE EXPENSE CAPITALIZED
PENELAS MINING COMPANY—FALLON, NEVADA

To January 31, 1936.

	Total to Nov. 30, 1935	Dec. 1, 1935 to Jan. 31, 1936	Total to Jan. 31, 1936
Salaries—Executive	\$ 6,300.00	\$2,100.00	\$ 8,400.00
do. —Office employees	1,837.42	770.00	2,607.42
Interest	1,518.31	1,030.33	2,548.64
Trucking water	1,340.79	109.12	1,449.91
Traveling and auto expense.....	1,083.06	182.97	1,266.03
Engineering salaries and expense.....	770.90	12.13	783.03
Boarding house loss.....	690.35	273.03(red)	417.32
Fuel and light.....	601.31	324.45	925.76
Stationery, supplies and postage.....	457.59	109.25	566.84
General labor	256.48	14.09	270.57
Insurance	298.40	136.91	435.31
Telephone and telegraph.....	288.79	61.51	350.30

Compensation insurance	245.30	14.06	259.36
Taxes	95.74	140.27	236.01
Rent	93.33	—	93.33
Legal and professional (auditing)	90.00	1,005.88	1,095.88
Miscellaneous income	527.91 (red)	63.95 (red)	591.86 (red)
Total	<u>\$15,439.86</u>	<u>\$5,673.99</u>	<u>\$21,113.85</u>

Distributed to:

Shaft	\$2,691.17
Drifts and raises.....	3,092.77
Buildings and structures	7,162.77
Machinery and equipment.....	7,163.40
Pipe and power lines.....	1,003.74
Total	<u>\$21,113.85</u>

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada. Intervener's Exhibit No. "F",
 Filed July 1st, 1938. O. E. Benham, Clerk. By....., Deputy. [275]

EXHIBIT G

Report of Examination Penelas Mining Company,
Fallon, Nevada, November 30, 1937.

Report From
Ernst & Ernst
Audits and Systems

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Notes Payable to Stockholders. [278]

Ernst & Ernst
Accountants and Auditors
System Service

San Francisco
485 California Street

January 18, 1938

Penelas Mining Company,
Fallon, Nevada.

We have made an examination of the balance sheet of Penelas Mining Company as at November

30, 1937, and of the statement of profit and loss for the year ended at that date. In connection therewith, we examined or tested accounting records of the Company and other supporting evidence, and obtained information and explanations from officers and employees of the Company; we also made a general review of the accounting methods and of the operating and income accounts for the year, but we did not make a detailed audit of the transactions.

The Company was incorporated on August 2, 1935 under the laws of the State of Nevada with an authorized capital of 150,000 shares of a par value of \$1.00 per share, all of which are issued and outstanding.

The balance sheet as at November 30, 1937, included herein, has been prepared on the basis outlined in this report. A summary of the assets and liabilities at November 30, 1937, and November 30, 1936, follows:

<u>Assets</u>	<u>Nov. 30, 1937</u>	<u>Nov. 30, 1936</u>	<u>Increase Decrease(red)</u>
Cash	\$ 463.51	\$ 1,918.36	\$1,454.85 (red)
Bullion, iron and slag.....	10,913.77	10,879.53	34.24
Inventories	10,468.71	4,677.26	5,791.45
Other assets	2,691.07	727.28	1,963.79
Mine, claims and develop- ment	183,214.30	179,151.83	4,062.47
Land, buildings, machin- ery, equipment, etc.....	125,258.12	127,852.07	2,593.95 (red)
Deferred	2,624.40	2,049.51	574.89
	<hr/>	<hr/>	<hr/>
	\$335,633.88	\$327,255.84	\$8,378.04

Liabilities

Accounts payable	\$ 20,976.97	\$ 23,012.80	\$2,035.83 (red)
Taxes payable	4,723.38	4,306.94	416.44
Officers' salaries	4,660.43	6,918.51	2,258.08 (red)
Lease and option.....	—	9,783.75	9,783.75 (red)
Notes payable and interest	156,478.24	128,673.24	27,805.00
Capital stock and surplus.	148,794.86	154,560.60	5,765.74
	<hr/>	<hr/>	<hr/>
	<u>\$335,633.88</u>	<u>\$327,255.84</u>	<u>\$8,378.04</u>

[279]

Attention is directed to statement of source and disposition of funds, included herein, for greater detail than as above summarized with respect to sources and disposition of funds.

The profit and loss statement for the year ended November 30, 1937, included herein, is summarized as follows:

	Amount	Per Ton	
		Current Year	Last Year
Values recovered	\$177,752.08	\$11.305	\$10.935
Operating expense	123,456.56	7.852	7.406
Gross Profit	\$ 54,295.52	\$ 3.453	\$ 3.529
Administrative and general.....	27,526.07	1.751	1.696
Operating Profit	\$ 26,769.45	\$ 1.702	\$ 1.833
Non-operating expense—net.....	5,183.57	.330	.303
Profit before Interest and Pro- vision for Depreciation.....	\$ 21,585.88	\$ 1.372	\$ 1.530
Interest	7,848.88		
Profit before Provision for Depreciation	\$ 13,737.00		
Provision for depreciation.....	19,502.74		
Net Loss	\$ 5,765.74(red)		

Operating and administrative and general expense schedules, included herein, disclose considerable variation as to individual items of operating costs. A substantial portion of increased operating costs undoubtedly may be attributed to a general wage increase of 50c per day effective May 1, 1937. At the time of the general increase in wages, board and lodging charges were increased 25c per day, and a charge was made for rent of residences which previously had been furnished free of charge.

In the preparation of the profit and loss statement no consideration has been given to the value of ore in bins or in solution at the beginning or end of the fiscal year, nor have prepaid mining costs on

ore in stopes been considered. In this connection Mr. John L. Dynan, Assistant General Manager, on November 15, 1937, estimated that broken ore in stopes aggregated 2,440 tons and that "blocked out" or "developed" ore aggregated 4,850 tons. The cost of exploration and development work carried on in the productive workings of the mine has not been segregated on the books, and the cost of such work is included in stoping and development expense. Expenses in connection with the development of the Combination Bonanza Claim, distinct and separate from the productive workings, were capitalized. Attention is directed to the fact that no provision for depletion for the fiscal year ended November 30, 1937, has been made. The Company has elected to compute provision for depletion for tax purposes on a percentage [280] basis; however, inasmuch as operations for the year resulted in a net loss no provision for depletion is allowable for tax purposes, nor has any other basis been established for computing provision for depletion for accounting purposes.

In connection with our review of the operating and income accounts we examined smelter and mint returns in support of bullion and tabulation of values recovered by months:

	<u>Values Recovered</u>	<u>Tons of Ore Milled</u>	<u>Value Per Ton of Ore</u>
Bullion shipments:			
December	\$17,029.04	1,434	\$11.875
January	13,418.58	1,329	10.097
February	10,032.35	1,263	7.943
March	10,971.59	1,404	7.814
April	9,066.86	1,229	7.377
May	9,507.77	1,320	7.203
June	13,666.06	1,263	10.820
July	12,541.61	1,128	11.118
August	17,420.79	1,384	12.587
September	14,048.58	1,167	12.038
October	21,167.64	1,377	15.372
November	22,593.88	1,425	16.108
	\$171,824.75	15,723	\$10.928
Iron and slag shipments:			
January	\$ 4,435.15		
Less inventory			
November 30, 1936.....	2,907.85		
	\$ 1,527.30		
April	1,051.88		
November	3,004.40		
Inventory November 30, 1937	343.75		
	\$ 5,927.33		.377
Total.....	\$177,752.08	15,723	\$11.305

The following comments are submitted in regard to the assets and liabilities, as set forth in the accompanying balance sheet, and the extent of our examination:

Office fund was counted during the course of our examination and reconciled to the amount shown to

be on hand at November 30, 1937. Cash on deposit was verified by direct correspondence with the depository bank and reconciliation of the amounts so reported with the balance shown by the Company's books. We made no examination of cash transactions of a nature necessary to discover irregularities or defalcations, should any exist.

The amount due from smelter (American Smelting and Refining Company) for iron and slag shipments in the amount of \$2,938.00 was received during December 1937. Bullion on hand represents the mill clean-up on November 30, 1937, and is valued at the net amount received from the smelter as shown by the smelter return. Gross value of bullion on hand has been included in gold and silver recovered in the profit and loss statement. The amount for iron and slag on hand is based upon the estimated market value of unshipped iron and slag accumulated during November, 1937. [281]

Inventories of supplies in the aggregate amount of \$10,468.71 are stated as taken and priced under the direction of the management and test checked by us as to basis of valuation and the arithmetical accuracy of extensions and footings. Supplies inventories are valued at cost throughout. The greater portion of inventories was purchased during October and November, 1937 at prices which remained in effect at November 30, 1937.

Other assets in the aggregate amount of \$2,691.07 include amounts due from officer and employees, deposits and other miscellaneous receivables, all of

which were satisfactorily accounted for by us. Amounts due from officer and employees are summarized as follows:

Officer—L. D. Gordon:

Advances and charges in excess of salary credits	\$470.34	
Travel advance	500.00	\$ 970.34
		<hr/>

Employees:

Byron James—advances & charges.....	\$177.05	
R. Clemens—do.	127.92	
John L. Dynan—expense advance.....	19.67	
Others—fuel charges	245.04	569.68
		<hr/>
Total.....		<u>\$1,540.02</u>

Mine and mining claims in the aggregate amount of \$154,878.51 includes the amount of \$102,000.00 representing the amount by which the par value of capital stock issued upon incorporation to the preceding partnership in exchange for the partnership net assets exceeded the cost of those net assets to the partnership. Charges to this account, during the year under review, were verified by inspection of quitclaim deeds to claims acquired and other data. During the year under review \$3,797.47 was expended and capitalized in connection with the development of the Combination Bonanza Claim, an entirely new development separate and distinct from the productive mine workings. We were informed that this development project had not progressed sufficiently to determine whether or not the claim might be productive, and that present

plans call for resumption of development work in the spring of 1938.

Hereinbefore, attention was directed to the fact that no provision for depletion for the fiscal year ended November 30, 1937, has been made. The Company has elected to compute provision for depletion for federal income tax purposes on a percentage basis as allowed by income tax regulations, computed at 15% of the gross receipts provided depletion so computed does not exceed 50% of net income before deducting depletion. Inasmuch as operations for the fiscal year ended November 30, 1937, resulted in a net loss, no provision for depletion is allowable for tax purposes, nor has any other basis been established for computing provision for depletion for accounting purposes.

Land, buildings, machinery, equipment, etc., are stated at depreciated cost value, and are without inventory or appraisal by us. Additions to these accounts during the year under review, were supported by examination of invoices, pay roll records, and other data on file. Provision for depreciation for the fiscal year ended November 30, 1937 in the amount of \$19,502.74, was computed upon the basis of established rates. The estimated useful life of depreciable assets located at the mine has been established not to exceed ten years from February 1, 1936, the date of commencement of operations.

Deferred charges in the aggregate amount of \$2,624.40 were verified by inspection of insurance policies, invoices and other data. [282]

Full provision for all ascertained indebtedness has been made under appropriate captions, as disclosed by the records examined and information obtained by us.

Trade accounts payable in the amount of \$11,145.71 were verified by trial balance of unpaid vouchers and comparison of balances with creditors' statements and invoices. Accounts payable assumed from Wild Rose Mine (a partnership in which Messrs. L. D. Gordon and R. H. White were equally interested) represents the unpaid balances of liabilities incurred by the partnership and which were assumed by the Company at the time it purchased the net assets of the partnership upon dissolution of the partnership. The unpaid balance at November 30, 1937, of liabilities assumed is composed of the following items:

I. H. Kent Company.....	\$1,373.09
Treasurer—Lyon County, Nevada	8.36
Western Machinery Company.....	3,231.44
	<hr/>
Total	<u><u>\$4,612.89</u></u>

Unpaid pay roll in the amount of \$4,862¹⁴² represents the unpaid portion of the pay roll for the month of November, 1937, and was verified by inspection of the pay roll records. Compensation insurance payable in the amount of \$355.95 was verified by inspection of report submitted for the month of November, 1937.

Various taxes payable and accrued in the aggre-

gate amount of \$4,723.38 were verified by inspection of tax returns, tax bills and computations based upon income, pay rolls, etc.

Salary payable to Mr. R. H. White in the amount of \$4,660.43 was confirmed by correspondence.

Notes payable to stockholders in the total amount of \$140,000.00, of which \$27,500.00 was past due at November 30, 1937, were confirmed by correspondence with the holders. Interest at the rate of 6% per annum from date made to November 30, 1937, in the aggregate amount of \$16,478.24 has been provided for. An agreement entered into on May 1, 1935, between L. D. Gordon and R. H. White as a basis for incorporating the Company, provides that no dividends may be declared until all loans made to the Company have been repaid. Further, the agreement provides that should Mr. White make additional loans for payment of the purchase price of the Leader Group of mining claims he shall be entitled to receive as security a first mortgage on all claims acquired; however, such right has not been exercised at November 30, 1937.

We were advised by Mr. Walter Rowson, Attorney for and Secretary of the Company, that the Directors of the Company had not met, nor had they adopted any corporate resolutions during the fiscal year ended November 30, 1937. Mr. Rowson also certified that the authorized and issued capital of the Company consisted of 150,000 shares of a par value of \$1.00 per share, and that the stockholders of record November 30, 1937, were as follows:

	Shares
L. D. Gordon.....	75,000
E. W. King.....	18,750
R. H. White, Jr.....	18,750
W. K. White.....	18,750
K. K. White.....	9,375
R. H. White.....	9,375
<div style="display: flex; justify-content: space-between; align-items: center;"> Total 150,000 [283] </div>	

Fire insurance coverage carried by the Company may be summarized as follows:

	Buildings	Contents
Mine and mill.....	\$17,800.00	\$17,200.00
Mine office, boarding house and residences	14,000.00	1,300.00
Fallon office	2,000.00	1,000.00
<div style="display: flex; justify-content: space-between; align-items: center;"> Total..... \$33,800.00 </div>		<div style="display: flex; justify-content: space-between; align-items: center;"> \$19,500.00 </div>

Automobile insurance in force may be summarized as follows:

La Salle sedan :	
Public liability	\$10/20,000.00
Property damage	5,000.00
Fire, theft and collision.....	
Chevrolet sedan :	
Public liability	\$ 5/10,000.00
Property damage	5,000.00
Fire, theft and collision.....	
Chevrolet truck :	
Public liability	\$ 5/10,000.00
Fire, theft and collision.....	

Bullion in transit is insured under a reporting policy and Mr. James, Assistant Secretary-Treasurer, is covered by a surety bond of \$10,000.00.

In our opinion, based upon our examination and subject to the fact that provision for depletion has not been provided for, the accompanying balance sheet and related statement of profit and loss fairly present the position of the Company at November 30, 1937, and the results of its operations for the year ended at that date. Further, it is our opinion that, except for failure to make provision for depletion as commented on hereinbefore, the statements have been prepared in accordance with accepted principles of accounting and on a basis consistent with the preceding year.

/s/ ERNST & ERNST,

Certified Public Accountants. [284]

BALANCE SHEET
 PENELAS MINING COMPANY—FALLON, NEVADA
 November 30, 1937

Assets			
Cash			
Office fund	\$	6.07	
On deposit		457.44	\$ 463.51
Bullion, Iron and Slag			
Due from smelter for iron and slag	\$	2,938.00	
Bullion on hand—at market		7,632.02	
Iron and slag on hand—at market		343.75	10,913.77
Inventories—at Cost			
Mill and assay supplies	\$	3,274.27	
Gasoline, fuel and lubricants		3,324.20	
Repair parts and supplies		2,403.78	
Explosives		1,053.44	
Boarding house		413.02	10,468.71
Other Assets			
Due from officer and employees	\$	1,540.02	
Compensation insurance and other deposits		489.67	
Accounts receivable		332.14	
Gasoline tax refund receivable		302.84	
Tax claim		26.40	2,691.07
Mine, Claims and Development			
Mine and mining claims—Note A	\$154,878.51		
Shaft	20,321.49		
Development—Penelas	8,999.66		
Development—Combination Bonanza	3,797.47		
Application for water rights	86.56	\$188,083.69	
Less reserve for depletion—Note B		4,869.39	183,214.30
Land, Buildings, Machinery, Equipment, Etc.			
Real Estate at Fallon		400.00	
Buildings and structures	\$ 57,027.68		
Machinery, equipment, tools, etc.	90,934.46		
Pipe and power lines	7,579.48		
Automobile and trucks	2,336.44		
Roads	414.50		
	\$158,292.56		
Less reserve for depreciation	33,434.44	\$124,858.12	125,258.12
Deferred			
Organization expense	\$	1,077.54	
Prepaid insurance		1,007.35	
Prepaid taxes		539.51	\$ 2,624.40
		\$335,633.88	



BALANCE SHEET
 PENELAS MINING COMPANY—FALLON, NEVADA
 November 30, 1937

Liabilities			
Accounts Payable			
Accounts payable—trade	\$ 11,145.71		
Accounts payable assumed from Wild Rose Mine.....	4,612.89		
Unpaid pay roll.....	4,862.42		
Compensation insurance	355.95	\$ 20,976.97	
Taxes Payable and Accrued			
Real and personal property taxes.....	\$ 1,519.00		
State pay roll taxes.....	1,050.60		
Federal pay roll taxes.....	332.75		
State bullion tax.....	922.18		
Federal capital stock tax.....	698.00		
Federal income tax—1936.....	200.85	4,723.38	
Officer's Salary			
R. H. White.....		4,660.43	
Notes Payable to Stockholders—Note C			
Notes payable	\$140,000.00		
Accrued interest	16,478.24	156,478.24	
Capital Stock and Surplus			
Capital stock (par value \$1.00 per share):			
Authorized and issued 150,000 shares.....	\$150,000.00		
Earned surplus (deficit):			
Earned surplus, November 30, 1936.....	\$4,560.60		
Net loss from operations for the year ended			
November 30, 1937, as shown by profit and		(red)	
loss statement	5,765.74(red)	1,205.14	148,794.86
			\$335,633.88
			\$335,633.88

Note A—The par value of capital stock issued upon incorporation to the preceding partnership exceeded the cost of net assets to the partnership by the amount of \$102,000.00, which amount was capitalized in the amount for mine and mining claims.

Note B—The Company has elected to compute provision for depletion for tax purposes on a percentage basis of gross receipts but limited to an amount not in excess of 50% of net income before provision for depletion. Inasmuch as operations for the fiscal year ended November 30, 1937 resulted in a net loss, no provision for depletion is allowable for tax purposes, nor has any other basis been established for computing provision for depletion for accounting purposes.

Note C—An agreement exists prohibiting the payment of dividends until notes payable to stockholders are paid. The same agreement provides that the note holders may take a first mortgage on mining claims as security for their loans, but such right had not been exercised at November 30, 1937.



SOURCE AND DISPOSITION OF FUNDS
PENELAS MINING COMPANY—FALLON, NEVADA

For the year ended November 30, 1937

Source of Funds

Operations:

Net loss for the year ended November 30, 1937 as shown by profit and loss statement.....	\$ 5,765.74(red)	
Add back provision for depreciation not requiring funds.....	19,502.74	\$13,737.00

Cash advanced by stockholders under notes payable.....		20,000.00
Interest accrued but unpaid on notes payable to stockholders.....		7,805.00

Other sources:

Decrease in cash.....	\$ 1,454.85	
Increase in taxes payable and accrued.....	416.44	1,871.29
		<u>\$43,413.29</u>

Disposition of Funds

Purchase of machinery, equipment, etc.:

Mill and mine machinery and equipment.....	\$12,292.31	
Residential furnishings	572.18	
Automobile and truck.....	\$2,164.95	
Less trade-in value.....	917.50	1,247.45
		<u>\$14,111.94</u>

Construction of Buildings:

Mill and mine buildings.....	\$ 606.14	
Residential buildings	2,190.71	2,796.85

Expenditures for claims and new development:

Claims acquired	\$ 265.00	
Expenditures capitalized in connection with development of Combination Bonanza claim.....	3,797.47	4,062.47

Reduction of liabilities:

Lease and option paid in full.....	\$ 9,783.75	
Reduction of accounts payable—trade.....	2,035.83	
Net reduction of liability for officers' salaries.....	2,258.08	14,077.66

Increases in various other assets:

Bullion, iron and slag.....	\$ 34.24	
Inventories	5,791.45	
Other assets—accounts receivable, deposits, etc.....	1,963.79	
Deferred charges	574.89	8,364.37

\$43,413.29



PROFIT AND LOSS STATEMENT
 PENELAS MINING COMPANY—FALLON, NEVADA
 For the year ended November 30, 1937

	Amount	Per Ton of Ore	
		Current Year	Last Year
Values recovered (15,723 tons of ore milled):			
Bullion:			
Gold (4350.796 fine ozs.).....	\$151,908.12	\$ 9.661	\$ 9.759
Silver (25861.06 fine ozs.).....	19,916.63	1.267	.941
	<u>\$171,824.75</u>	<u>\$10.928</u>	<u>\$10.700</u>
Iron and slag.....	5,927.33	.377	.235
	<u>\$177,752.08</u>	<u>\$11.305</u>	<u>\$10.935</u>
Operating expense—as shown by schedule			
Stopping and development.....	\$ 75,736.96	\$ 4.817	\$ 4.637
Milling	47,719.60	3.035	2.769
	<u>\$123,456.56</u>	<u>\$ 7.852</u>	<u>\$ 7.406</u>
Gross Profit	\$ 54,295.52	\$ 3.453	\$ 3.529
Administrative and general expense—as shown by schedule	27,526.07	1.751	1.696
Operating Profit	\$ 26,769.45	\$ 1.702	\$ 1.833
Non-operating expense—net:			
Trucking	\$3,687.38		
Camp maintenance	548.62		
Road maintenance	972.05		
Loss on boarding house.....	115.05		
Loss on residences.....	81.84		
	<u>\$5,404.94</u>		
Less non-operating income:			
Profit on purchases for employees \$	219.59		
Discounts taken	1.78		
	<u>\$ 221.37</u>		
	5,183.57	.330	.303
Profit before Interest and Provision for Depreciation	\$ 21,585.88	<u>\$ 1.372</u>	<u>\$ 1.530</u>
Interest:			
On notes payable to stockholders.....	\$7,805.00		
Other	43.88		
	<u>7,848.88</u>		
Profit before Provision for Depreciation.....	\$ 13,737.00		
Provision for depreciation.....	19,502.74		
Net Loss	<u>\$ 5,765.74 (red)</u>		

Note—The Company has elected to compute provision for depletion for tax purposes on a percentage basis of gross receipts but limited to an amount not in excess of 50% of net income before provision for depletion. Inasmuch as operations for the year resulted in a net loss, no provision for depletion is allowable for tax purposes, nor has any other basis been established for computing provision for depletion for accounting purposes.



PENELAS MINING COMPANY—FALLON, NEVADA

For the year ended November 30, 1937.

	Amount			Cost per Ton	
	Salaries and Wages	Materials Supplies Expense	Total	Current Year	Last Year
Stoping and Development (15,723 tons)					
Mining.....	\$14,205.90	\$ —	\$ 14,205.90	\$.904	\$.831
Mucking and tramming.....	10,724.47	—	10,724.47	.682	.543
Timbering.....	5,763.45	2,343.42	8,106.87	.516	.590
Hoisting.....	5,649.98	1,560.88	7,210.86	.459	.364
Explosives.....	—	6,921.69	6,921.69	.440	.403
Superintendence.....	4,475.00	—	4,475.00	.285	.290
Compressor.....	1,555.33	2,707.69	4,263.02	.271	.477
Repairs and maintenance.....	1,566.86	2,433.65	4,000.51	.254	.322
Engineering and sampling.....	3,160.19	268.09	3,428.28	.218	.091
Compensation insurance.....	—	3,115.20	3,115.20	.198	.153
Track and pipe.....	1,752.80	625.23	2,378.03	.151	.155
Blacksmith shop.....	1,637.54	272.62	1,910.16	.121	.154
Assaying.....	1,033.85	316.08	1,349.93	.086	.131
Materials and supplies.....	—	1,306.49	1,306.49	.083	.102
Ventilation.....	3.94	358.96	362.90	.023	.031
Shaft extension.....	961.81	695.81	1,657.62	.106	—
Assessment work.....	312.38	7.65	320.03	.020	—
Total.....	\$52,803.50	\$22,933.46	\$ 75,736.96	\$4.817	\$4.637
Milling (15,723 tons)					
Milling.....	\$11,862.54	\$ —	\$ 11,862.54	\$.754	\$.710
Supplies—chemicals, balls, etc.....	—	9,888.43	9,888.43	.629	.631
Power.....	1,139.27	8,006.41	9,205.68	.585	.484
Repairs and maintenance.....	1,467.70	3,891.81	5,359.51	.341	.288
Water.....	2,267.70	854.34	3,122.04	.199	.142
Superintendence.....	2,875.00	—	2,875.00	.183	.172
Smelter charges, express, etc.....	—	1,676.65	1,676.65	.107	.067
Assaying.....	1,033.85	298.07	1,331.92	.085	.100
Crushing.....	1,074.10	—	1,074.10	.068	.084
Compensation insurance.....	—	850.60	850.60	.054	.063
Refining.....	27.50	445.63	473.13	.030	.028
Total.....	\$21,747.66	\$25,971.94	\$ 47,719.60	\$3.035	\$2.769
Total Operating Expense.....	\$74,551.16	\$48,905.40	\$123,456.56	\$7.852	\$7.406

ADMINISTRATIVE AND GENERAL EXPENSE
 PENELAS MINING COMPANY—FALLON, NEVADA
 For the year ended November 30, 1937

	Amount	Cost per Ton	
		Current Year	Last Year
Salaries:			
Executive	\$12,600.00	\$.801	\$.848
Fallon office	3,085.70	.196	.202
Mine office	934.53	.060	.104
	\$16,620.23	\$1.057	\$1.154
Taxes:			
Federal and state unemployment.....	\$ 2,036.85	\$.130	\$.049
Federal old age benefits.....	847.14	.054	—
Mine property	1,527.47	.097	.085
State bullion	1,167.39	.074	.074
Federal capital stock.....	690.50	.044	.081
Fallon property	59.54	.004	.005
	\$ 6,328.89	\$.403	\$.294
Insurance	1,270.04	.081	.079
Traveling and automobile.....	1,078.44	.069	.074
Legal and auditing.....	768.20	.049	.009
Repairs and maintenance.....	415.02	.026	.019
Supplies and expense.....	446.77	.028	.037
Telephone and telegraph.....	332.75	.021	.020
Postage	136.11	.009	.008
Compensation insurance	85.10	.005	—
Miscellaneous	44.52	.003	.002
	\$27,526.07	\$1.751	\$1.696
Total.....	\$27,526.07	\$1.751	\$1.696

NON-OPERATING EXPENSE—NET
 PENELAS MINING COMPANY—FALLON, NEVADA
 For the year ended November 30, 1937

<hr/> <hr/>			
Non-Operating Expense			
Trucking:			
Labor		\$ 1,618.21	
Gasoline, oil, tires, repairs, etc.....		2,069.17	\$3,687.38
		<hr/>	
Road maintenance:			
Labor	\$ 7.12		
Expenses and equipment rental.....	1,214.93	1,222.05	
		<hr/>	
Less recovered from Nye County.....		250.00	972.05
		<hr/>	
Camp maintenance:			
Labor			548.62
Loss on boarding house:			
Labor	\$ 3,054.73		
Food	11,038.32		
Fuel	318.17		
Supplies and expense.....	109.54		
Compensation insurance	22.40	\$14,543.16	
		<hr/>	
Less revenue from meals.....		14,428.11	115.05
		<hr/>	
Loss on residences:			
Repairs and maintenance:			
Labor	\$ 206.88		
Materials and supplies.....	1,245.50	\$ 1,452.38	
		<hr/>	
Less revenue from rentals.....		1,370.54	81.84
		<hr/>	<hr/>
			\$5,404.94
Less Non-Operating Income			
Profit on purchases for employees:			
Collected from employees.....	\$ 1,619.04		
Less purchases for employees.....	1,399.45	\$ 219.59	
		<hr/>	
Discounts taken		1.78	221.37
		<hr/>	<hr/>
	Non-Operating Expense—Net		\$5,183.57
			<hr/> <hr/>

DEVELOPMENT EXPENDITURES CAPITALIZED
PENELAS MINING COMPANY—FALLON, NEVADA
For the year ended November 30, 1937

	Salaries and Wages	Materials Supplies Expense	Total
Combination Bonanza Claim			
Mining	\$1,604.19	\$ —	\$1,604.19
Materials, supplies and explosives.....	—	733.26	733.26
Mucking	533.05	—	533.05
Compressor	67.26	270.50	337.76
Engineering and sampling.....	300.00	1.35	301.35
Timbering	84.37	108.88	193.25
Track and pipe.....	—	50.86	50.86
Hauling supplies	43.75	—	43.75
Total.....	<u>\$2,632.62</u>	<u>\$1,164.85</u>	<u>\$3,797.47</u>

BUILDINGS AND STRUCTURES
PENELAS MINING COMPANY—FALLON, NEVADA
November 30, 1937

	Cost of Assets				Reserve for Depreciation				Depreciated Cost Value
	Balance Nov. 30, 1936	Additions	Adjustments and Dis- positions	Balance Nov. 30, 1937	Balance Nov. 30, 1936	Provision for De- preciation	Adjustments and Dis- positions	Balance Nov. 30, 1937	
Mill and Mine									
Mill.....	\$17,184.36	\$ —	\$ —	\$17,184.36	\$1,432.01	\$1,718.44	\$ —	\$3,150.45	\$14,033.91
Crusher.....	620.86	—	—	620.86	51.73	62.09	—	133.82	507.04
Ore bins.....	4,523.86	—	—	4,523.86	376.99	452.38	—	829.37	3,694.49
Power plant.....	1,016.77	—	—	1,016.77	84.72	101.68	—	186.40	830.37
Pumping plant.....	299.96	—	—	299.96	24.99	30.00	—	54.99	244.97
Assay office.....	1,186.16	—	—	1,186.16	98.85	118.62	—	217.47	968.69
Blacksmith shop.....	305.60	—	—	305.60	25.46	30.56	—	56.02	249.58
Warehouses.....	1,528.98	101.36	120.00(red)	1,510.34	127.41	142.78	10.00(red)	260.19	1,250.15
Machine shop.....	299.67	—	—	299.67	24.98	29.97	—	54.95	244.72
Hoist.....	1,936.22	—	—	1,936.22	161.37	193.62	—	354.99	1,581.23
Refinery.....	510.08	—	—	510.08	42.51	51.01	—	93.52	416.56
Change room.....	777.14	—	—	777.14	64.76	77.71	—	142.47	634.67
Electrical shop.....	13.78	420.81	—	434.59	—	28.98	—	28.98	405.61
Carpenter shop.....	129.39	83.97	—	213.36	—	14.21	—	14.21	199.15
	<u>\$30,332.83</u>	<u>\$ 606.14</u>	<u>\$120.00(red)</u>	<u>\$30,818.97</u>	<u>\$2,515.78</u>	<u>\$3,052.02</u>	<u>\$10.00(red)</u>	<u>\$5,557.83</u>	<u>\$25,261.14</u>
Offices									
Penelas.....	\$ 1,668.45	\$ —	\$ —	\$ 1,668.45	\$ 139.03	\$ 166.84	\$ —	\$ 305.87	\$ 1,362.58
Fallon.....	2,437.17	—	—	2,437.17	101.55	121.86	—	223.41	2,213.76
	<u>\$ 4,105.62</u>	<u>\$ —</u>	<u>\$ —</u>	<u>\$ 4,105.62</u>	<u>\$ 240.58</u>	<u>\$ 288.70</u>	<u>\$ —</u>	<u>\$ 529.28</u>	<u>\$ 3,576.34</u>
Residential									
Boarding house.....	\$ 2,062.44	\$ 293.54	\$ —	\$ 2,355.98	\$ 171.87	\$ 211.68	\$ —	\$ 383.55	\$ 1,972.43
Residences.....	17,729.94	1,897.17	120.00	19,747.11	1,477.53	1,820.99	10.00	3,308.52	16,438.59
	<u>\$19,792.38</u>	<u>\$2,190.71</u>	<u>\$120.00</u>	<u>\$22,103.09</u>	<u>\$1,649.40</u>	<u>\$2,032.67</u>	<u>\$10.00</u>	<u>\$3,692.07</u>	<u>\$18,411.02</u>
Total.....	<u>\$54,230.83</u>	<u>\$2,796.85</u>	<u>\$ —</u>	<u>\$57,027.68</u>	<u>\$4,405.76</u>	<u>\$5,373.42</u>	<u>\$ —</u>	<u>\$9,779.18</u>	<u>\$47,248.50</u>

MACHINERY, EQUIPMENT, TOOLS, ETC.
PENELAS MINING COMPANY—FALLON, NEVADA
November 30, 1937

	Cost of Assets				Reserve for Depreciation				Depreciated Cost Value
	Balance Nov. 30, 1936	Additions	Adjustments and Dis- positions	Balance Nov. 30, 1937	Balance Nov. 30, 1936	Provision for De- preciation	Adjustments and Dis- positions	Balance Nov. 30, 1937	
Mill and Mine									
Mill, crusher and ore bins.....	\$33,959.84	\$ 219.00	\$ 210.79	\$ 34,389.63	\$ 2,829.93	\$ 3,428.77	\$ 43.92	\$ 6,302.62	\$28,087.01
Power plant.....	13,689.22	—	—	13,689.22	1,613.50	1,936.12	—	3,549.62	10,139.60
Pumping plant.....	6,776.71	—	—	6,776.71	536.91	688.84	—	1,225.75	5,550.96
Assay office.....	1,558.04	—	125.57 (red)	1,432.47	242.90	256.91	34.88 (red)	464.93	967.54
Blacksmith shop.....	480.63	—	—	480.63	122.45	146.94	—	269.39	211.24
Machine shop.....	313.48	25.57	501.23	840.28	52.26	165.50	140.30	358.06	482.22
Mining.....	3,430.71	2,059.72	—	5,490.43	667.22	1,191.38	—	1,858.60	3,631.83
Hoist.....	5,075.99	—	—	5,075.99	1,102.37	1,627.63	—	2,730.00	2,345.99
Compressor.....	4,487.14	7,910.00	—	12,397.14	865.20	2,205.22	—	3,070.42	9,326.72
Track and pipe in mine.....	1,612.26	1,908.02	—	3,520.28	134.35	267.23	—	401.58	3,118.70
Ventilation.....	515.70	170.00	—	685.70	74.30	108.64	—	182.94	502.76
Small tools.....	785.26	—	785.26 (red)	—	218.27	—	218.27 (red)	—	—
In storage.....	1,229.45	—	77.73	1,307.18	66.97	10.00	27.98	104.95	1,202.23
Refinery.....	612.45	—	—	612.45	133.13	108.53	—	241.66	370.79
Telephone system.....	88.44	—	—	88.44	2.95	17.69	—	20.64	67.80
Electrical shop.....	—	—	68.73	68.73	—	17.75	19.25	37.00	31.73
Carpenter shop.....	—	—	37.53	37.53	—	7.51	10.50	18.01	19.52
	<u>\$74,615.32</u>	<u>\$12,282.31</u>	<u>\$ 14.82 (red)</u>	<u>\$ 86,892.81</u>	<u>\$ 8,662.71</u>	<u>\$12,184.66</u>	<u>\$ 11.20 (red)</u>	<u>\$20,836.17</u>	<u>\$66,056.64</u>
Offices									
Penelas.....	\$ 273.16	\$ —	\$ —	\$ 273.16	\$ 32.04	\$ 38.44	\$ —	\$ 70.48	\$ 202.68
Engineering.....	259.51	—	—	259.51	16.57	32.35	—	48.82	210.69
Hospital.....	99.76	—	4.82	104.58	8.31	10.52	1.20	20.03	84.55
Fallon.....	649.25	—	—	649.25	70.87	85.01	—	155.88	493.37
	<u>\$ 1,281.68</u>	<u>\$ —</u>	<u>\$ 4.82</u>	<u>\$ 1,286.50</u>	<u>\$ 127.79</u>	<u>\$ 166.22</u>	<u>\$ 1.20</u>	<u>\$ 295.21</u>	<u>\$ 991.29</u>
Residential									
Boarding house.....	\$ 524.97	\$ —	\$ —	\$ 524.97	\$ 87.50	\$ 105.00	\$ —	\$ 192.50	\$ 332.47
Residences.....	1,658.00	572.18	—	2,230.18	138.17	197.58	—	335.75	1,894.43
	<u>\$ 2,182.97</u>	<u>\$ 572.18</u>	<u>\$ —</u>	<u>\$ 2,755.15</u>	<u>\$ 225.67</u>	<u>\$ 302.58</u>	<u>\$ —</u>	<u>\$ 528.25</u>	<u>\$ 2,226.90</u>
Pipe and Power Lines									
Pipe and Power Lines.....	\$ 7,579.48	\$ —	\$ —	\$ 7,579.48	\$ 631.64	\$ 757.96	\$ —	\$ 1,389.60	\$ 6,189.88
Automobile and Trucks.....	2,404.80	2,164.95	2,233.31 (red)	2,336.44	1,169.40	676.44	1,315.81 (red)	530.03	1,806.41
Roads.....	414.50	—	—	414.50	34.54	41.46	—	76.00	338.50
Total	<u>\$88,478.75</u>	<u>\$15,029.44</u>	<u>\$2,243.31 (red)</u>	<u>\$101,264.88</u>	<u>\$10,851.75</u>	<u>\$14,129.32</u>	<u>\$1,325.81 (red)</u>	<u>\$23,655.26</u>	<u>\$77,609.62</u>

NOTES PAYABLE TO STOCKHOLDERS

PENELAS MINING COMPANY—FALLON, NEVADA

November 30, 1937

Date	Due Date	R. H. White	K. K. White
1-13-36	1-13-37	\$ 1,250.00	\$ 1,250.00
1-21-36	1-21-37	1,500.00	1,500.00
1-30-36	1-30-37	3,500.00	3,500.00
3-28-36	3-28-36	2,500.00	2,500.00
3-10-35	9-10-37	2,000.00	2,000.00
5- 1-35	11- 1-37	1,500.00	1,500.00
5-15-35	11-15-37	1,500.00	1,500.00
6-25-35	12-25-37	5,000.00	5,000.00
5- 1-37	1- 1-38	2,500.00	2,500.00
5-11-37	1- 1-38	2,500.00	2,500.00
6-21-37	1- 1-38	2,500.00	2,500.00
8-24-37	1- 1-38	2,500.00	2,500.00
7-25-35	1-25-38	10,000.00	10,000.00
8-22-35	2-22-38	2,500.00	2,500.00
9- 1-35	3- 1-38	5,000.00	5,000.00
9-22-35	3-22-38	5,000.00	5,000.00
10-23-35	4-23-38	5,000.00	5,000.00
11-12-35	5-12-38	5,000.00	5,000.00
11-20-35	5-20-38	2,500.00	2,500.00
12- 5-35	6- 5-38	6,250.00	6,250.00
Total.....		\$70,000.00	\$70,000.00

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Intervener's Exhibit No. "G". Filed July 1st, 1938. O. E. Benham, Clerk. By....., Deputy. [292]

INTERVENER'S EXHIBIT H

PENELAS MINING COMPANY

Post Office Box 151
FALLON, NEVADA

PRODUCTION RECORD—to APRIL 30, 1938

Gross Value of Mine Production—		
1935—Crude Ore Shipments.....	\$ 21,088.87	
1936—Precipitate shipments	24,956.03	
Bullion shipments	<u>128,777.71</u>	
		153,733.74
1937—Bullion Shipments	198,770.73	
1938—Bullion shipments—to April 30.....	83,764.55	
1936, 1937, 1938—Iron & Slag.....	<u>11,144.97</u>	
Total, Gross Production.....		\$468,502.86
Deductions—		
Mill Tails		
1936	20,424.65	
1937	26,945.98	
1938—to April 30.....	<u>9,341.07</u>	
Total, Mill Tails.....		56,711.70
Balance		<u>411,791.16</u>
Smelter deductions for treatment, freight, etc.		
1935—Crude Ore shipments.....	5,397.21	
1936—Precipitates	926.37	
1936—Bullion	435.46	
1937—Bullion	903.31	
1938—Bullion	<u>321.16</u>	
		1,659.93
All Iron & Slag.....	<u>1,032.03</u>	
Total, Smelter Charges.....		<u>9,015.54</u>
		\$402,775.62
Less: Value of Iron & Slag on hand, Apr. 30, 1938.....		<u>579.16</u>
Net Cash Receipts.....		\$402,196.46

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Intervener's Exhibit No. "H". Filed July 1st, 1938. O. E. Benham, Clerk. By _____, Deputy. [293]

INTERVENER'S EXHIBIT 1
TABLE SHOWING PRODUCTION OF PENELAS MINE
by Levels and Veins to April 30, 1938

Figures shown are total gross content of the ore, before deducting milling losses.

Level	Penelas Vein		Victor Vein		Total	
	Tons	Grade	Tons	Grade	Tons	Grade
100	7114	\$ 8.90	1340	\$13.42	8,454	\$ 9.61
200	9297	15.09	4162	18.59	13,459	16.17
300	6176	12.78	343	18.99	6,519	13.10
400	6971	11.20			6,971	11.20
500	594	10.80			594	10.08
	30,152	\$12.12	5,845	\$17.43	35,997	\$13.01
		\$366,592.78		\$101,910.08		\$468,502.86

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada. Intervener's Exhibit No. '1' Filed July 1st, 1938. O. E. Benham, Clerk. By, Deputy.

[294]

INTERVENER'S EXHIBIT J.

Nevada Porphyry Gold Mines, Inc.

Round Mountain, Nevada

May 1, 1934.

Mr. Rollin H. White,
c/o Cleveland Tractor Company,
Cleveland, Ohio.

Dear Mr. White:

I am very glad to have your letter of the 24th, written from Hot Spring, Arkansas.

I note that you are leaving there with the expectation of arriving home the 7th of this month. I do not believe a letter would reach you before you left Arkansas so I am addressing this letter to you at Cleveland, sending one copy air mail and the other regular mail so that you will be sure to receive one or both copies upon arrival.

As far as the Seven Troughs situation is concerned, you need have no concern about my trouble with Mr. Cole. I knew Mr. Cooke fifteen years before he ever saw Mr. Cole and Mr. Cooke has been my attorney and the attorney for companies I represented on more than one occasion. In addition, he is quite discreet and do not believe would volunteer any information. If any questions were asked him he would, of course, state the facts to which I have no objection as, in my opinion, there is no substitute for the truth nor is there any substitute for honesty—so as far as this matter is concerned, please dismiss any apprehension you may have.

Coming to the Penelas matter, and in accordance with my letter of April 13 regarding the option, there is a payment of \$3,500.00 due June 1 which must be made. The option then provides that the sum of \$5,000 must be paid each ninety days thereafter until the full purchase price is paid. That is to say, \$3,500.00 June 1 and \$5,000.00 every three months after that. However, I [295] have assurance from the Administrator and from the Attorney representing the heirs that if this payment is made, an extension can then be had on the next payment due. It is my thought to ask for a six months' extension for the payment due September 1. This would make the next payment of \$5,000.00 due December 1 and the balance of the payments, of \$5,000.00 each, to be made every ninety days thereafter. I can assure you that I can make this arrangement, however, to do this and as a good reason for asking them to do it I would move the machinery mentioned in my letter of April 13th on to the ground which would be a very definite showing of good faith and justify the optionor in granting the requested extension.

I would say the budget should be as follows as far as the preliminary work is concerned:

\$2,000.00 immediately, to enable me to begin work and carry it on for a month.

\$3,500.00 for the payment due June 1,

Then \$2,000.00 each month thereafter plus \$2,000.00 for moving the machinery on to the ground and setting it up and

\$5,000 on or before December 1, 1934.

Counting May as one month, that would make \$24,000.00 during the next seven months allowing \$1,500.00 for contingencies and items not included in the budget.

In other words, this would be the set-up:

\$2,000.00 for work in May.

\$3,500.00 for the payment due June 1.

\$2,000.00 for work in July.

\$2,000.00 for work in August, plus \$2,000.00 for moving the machinery in August, or \$4,000.00 in August.

\$2,000.00 in September.

\$2,000.00 in October. [296]

\$2,000.00 in November.

\$5,000.00 for the payment December 1.

This would make \$22,500.00. The extra \$1,500.00, to make the \$24,000.00 mentioned in my letter of April 13, to be furnished at any time during the period when contingencies or any unlooked for expenses made it necessary.

As far as the water situation is concerned, it is barely possible that as sinking of the working shaft goes forward, sufficient water will be encountered in the shaft for the operation of a mill as the elevation of the mine is not so much greater than the point at which wells should be sunk for water development. For that reason I am inclined to believe that both objects can be accomplished at the same time. That is to say, the mine developed to depth and water sufficient for such a mill as we would need,

made available. If not, I would say that it would not cost to exceed \$10,000.00 to develop water for the mill and put it on the ground. Since writing you I have determined that there are some springs within two or three miles of the mine which might be developed and which would furnish sufficient water for the mill without pumping. That is to say the water in question flow to the mill by gravity. In any event the water situation is not troublesome or expensive as I see it.

I would say that in addition to the \$24,000.00, there should be expended on the mine before a mill is built, the sum of \$20,000.00. This would develop the property to a point where it would carry itself. That is to say, there would be sufficient ore blocked out to justify the erection of a mill and from that time on, additional development work would be carried by the property.

A 50-ton mill can be erected for \$60,000.00 if proper judgment is used in the purchase of the machinery and its [297] installation.

I am very frank to say that it is not my thought to either you or I carry this burden beyond the investment I have made to date and the \$24,000.00 I am asking you to furnish.

I neglected to state in my former letter that the agreement provides for the issuance to the Estate of stock in the corporation in an amount equal to 10% of the promotion stock. In other words, the exact reading is as follows:

“The party of the second part agrees to cause to be issued and delivered to the party of the first part shares of stock in a corporation to be formed to take over the rights of the party of the first part in this agreement and to operate said property, an amount equal to 10% of the shares of such corporation which may be issued as so-called promotion stock. Such shares, when so issued, to be fully paid and non-assessable.”

This for the reason that no option has ever been considered on the property in an amount less than \$75,000.00. The stock was provided in order to justify the Administrator and the Court in granting an option for \$40,000 cash and it struck me that it would be much easier to issue 100,000 shares of stock, or so, than to raise that much cash. Here then is my thought:

After the \$24,000.00 you advance has been expended, that a corporation be organized for 2,000,000 shares of a par value of either twenty-five or fifty cents a share. Of this, we should receive 1,100,000 shares or 55% which would be control. We would be entitled to this for the \$48,000.00 we had expended, for a transfer of the option and for the fact, I think, that the property would be developed to a point where it would be worth several times what it was worth before the money was expended. Under the agreement the Estate would be entitled to 10% of this amount or 110,000 shares. This leaves 790,000 shares of the 2,000,000 shares remaining in the treasury. Allowing \$20,000.00 [298] for addi-

tional development work, \$60,000.00 for a mill, \$30,000.00 for the balance of the purchase price and \$10,000.00 for water development would make \$120,000.00.

When we got ready to organize the corporation we would either have a mine justifying it and justifying our going to our friends for the purpose of raising money or to a reputable firm of brokers or we could both walk away, as a remote possibility, and be out the same amount of money, however, there is no question in my mind about the property responding to development and shaping into a valuable mine. Having 790,000 shares in the treasury, we could sell 300,000 shares at 50¢ a share to raise this money and have approximately 200,000 shares left in the treasury. This matter could be decided later on the basis of just how valuable the property proved to be at the time we organize the company.

Taking a 50-ton mill as an example and cutting the anticipated profit in two on account of the possibility of gold being devalued slightly and to allow a proper safety factor there would be a profit of \$6.50 per ton. On the basis of 1,500 tons per month, there would be a profit of \$100,000.00 a year or 10% on 50¢ per share with the entire 2,000,000 shares issued. With the stock sold at 25¢ a share the above earnings would show a profit of 20% and it may be that if the stock is sold to friends and acquaintances we will want to sell it at 25¢ a share in order to give them the best possible break for their investment.

We would still have, after selling the necessary stock to do what we want to do, 200,000 shares left in the treasury as a reserve which, if the mine went ahead and it became necessary, could, conceivably, be sold at from fifty cents to a dollar a share. There is never any trouble in financing a real property and by December 1 we will have a real property and as I see it, gold is one of the things that is going to be absolutely safe and sure in the future. For that reason I cannot recommend too highly the [299] property in question and I cannot urge too strongly that you participate with me in the matter. Of course, nothing is absolutely certain but this is the profession I have followed all my life, I am thoroughly familiar with the type of deposit under consideration, I have shown no hesitancy in putting my own money and time into the thing and will show no hesitancy in the future. It is simply a question of my available resources and I would not be telling the truth if I said that I could proceed indefinitely and carry one-half of all the necessary expenditures to place the property on a dividend-paying basis, however, I think that the above outline is safe and sane and I can say to you is much more reasonable than 99% of the deals I have known of in the past.

For our investment we would have control of the property for a comparatively small amount of money, all things considered, and would undoubtedly have it developed to a point assuring its success so that we would be giving any of our friends or acquaintances a real break if they were permitted

to participate on the basis of say twenty-five to fifty cents a share. If I did not feel sure that it is worth while I would not have done what I have done to date but would have attempted to sell it to someone, make a profit on the option and forget it.

As a matter of fact, as far as the sale of the stock is concerned, if the property develops as I feel sure it will we would not have to go to anyone except a reputable firm of brokers who would be mighty glad to undertake the sale of stock in any property worth while as, in my opinion, gold mining investments on a sound basis are going to be more popular than any other type of investment and I think this may be the case for several years to come.

I will appreciate your wiring me immediately upon receipt of this letter as I am anxious to make arrangements to begin work. [300] I might also say that, in my opinion, extraction and shipment of ore can be started within thirty days after work is begun and it may be that a considerable profit can be had from this thereby enabling us to do more work than the above budget contemplates as if additional work above the budget estimate can be done on velvet, so much the better.

With kindest personal regards and best wishes,
I am

Yours very sincerely,

/s/ LOUIS D. GORDON.

LDG:G [301]

Nevada Porphyry Gold Mines, Inc.
Round Mountain, Nevada

May 2, 1934.

Mr. Rollin H. White,
c/o Cleveland Tractor Co.,
Cleveland, Ohio.

Dear Mr. White:

In the last paragraph of my letter of yesterday, page 4, I meant the 200,00 shares remaining in the treasury could probably be sold at much higher prices than the first stock was sold, in case we cared to enlarge the mill or sink additional shafts, etc. without affecting the mine earnings.

I, of course, have in mind the Federal Securities Act but I do not anticipate any trouble about this. I will have the thing developed to a point where it will stand the most rigid investigation. There will be a good plant of machinery in operation and if we deem it necessary, additional claims can be located by us to increase the acreage.

If there are any restrictions as to par value of the stock, etc., the same proportions as outlined in my letter could follow. That is to say, with a small number of shares and a larger par value, we could retain the same interest and proceed in the same manner as outlined in my letter.

This might also become a nucleus for additional things and that is one thing I had in mind in the paragraph of my letter referred to, viz. the last paragraph on page 4. As this thing gets on its feet

and becomes productive, the remaining stock in the treasury could be sold at a higher price in order to take advantage of other good properties which might be brought to our attention.

Kindest personal regards.

Yours very sincerely,

/s/ L. D. GORDON.

LDG:G [302]

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Intervener's Exhibit No. "J". Filed July 6th, 1938. O. E. Benham, Clerk. By _____, Deputy.

INTERVENER'S EXHIBIT K

Penelas Mining Company

Post Office Box 151,

Fallon, Nevada

November 22, 1937

Mr. R. H. White
c/o Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

I have had Dynan continue his letters just the same as when I was on my vacation, and also send you all the information you requested.

Things are in good condition at the mine, and we will have a very good month. As stated to you, by the first of December we will have all bills paid and

beginning with the month of January we can begin to return your money.

I, of course, would like to have the downward extension of the 200 Level ore body opened on the 300 Level, but frankly I am not at all apprehensive about this as I think the major fault which cut off the ore body on the 200 Level and a south rake of the Victor ore body explains the condition. Dynan is enclosing a sketch illustrating this. Certainly the position of the ore on the 100 and 200 Levels definitely indicates a south rake to the ore body. You will recall that when I was on my vacation, I wrote you from La Jolla to the effect that I thought another vein could be opened on the 300 Level south. I have had Dynan speak of this in his letter going forward today. I have had this country in mind for some time, and did some work in this region last winter. Sometime new developments put an entirely different look upon things. About a week ago, I took a sample there, and got a \$40.00 assay which I have since had Dynan check. Right now, we have showing the equivalent of two feet of \$17.00 ore in this new place on the 300 Level and it is my thought that we will [303] develop an entirely new ore body with good chances, of course, of opening it on the levels above and below. We have not yet reached the fault that displaced the ore body on the 200 Level, but will not be long in doing this. In addition, we are driving a raise on the 300 Level which will prove or disprove my theory of the south rake of the ore shoot.

I, of course, am willing to come to Cleveland and go over the entire situation with you; but, frankly, I am not so enthusiastic about flying such a long distance at this time of the year. And this with the fact in view, that I am always a flying enthusiast. The fact remains that every once in a while somehow one of these liners nose into a mountain range in the winter time in spite of all precautions. I do not have the slightest apprehension about the situation at Penelas and do not feel that you should have, and hope you haven't. If you want me to come to Cleveland, wish you would wire me on receipt of this letter; and, of course, will come and will take the plane if necessary to be there when you want me to.

I think we have a very good new ore body on the 400 Level north. The drift shows good mill values for a length of 30 feet and I do not know how wide the vein is, certainly five or six feet of pay ore and probably much wider. Since passing through this ore shoot, the drift has advanced on a strong vein showing values from \$4.00 to \$6.00. However, the footwall has not been in sight at any time so that this section offers a lot of possibilities.

I have just checked on bullion for the past eleven months, from December 1, 1936 to October 31, 1937, and find that had we been relegated to the world price during this period (that is 44¢) it would have made a difference of approximately 51½¢ per ton.

Helen joins me in kindest personal regards.

Yours very sincerely,

/s/ L. D. GORDON.

LDG:ds [304]

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Intervener's Exhibit No. "K". Filed July 6th, 1938. O. E. Benham, Clerk. By, Deputy.

INTERVENER'S EXHIBIT I.

Penelas Mining Company

Post Office Box 151

Fallon, Nevada

November 10, 1937

R. H. White
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

This will acknowledge receipt of your letter of November 2 and in response thereto, will have Dynan continue to transmit the letters you speak of.

I reached home late Thursday night, November 4, worked in the office the 5th, 6th, and 7th, and had to leave for San Francisco the night of the 7th to attend an urgent call for a directors' meeting of the Nevada Porphyry Company. It seems, Mr. Harry Corvin, the person who was the ringleader in dealing me the misery in Round Mountain recently had all of his authority taken from him as a member of

the executive committee. He then resigned as a director and he now proposes to bring a suit for some very large amount of money, I think \$25,000.00 or more, for legal services; and this and certain other matters made it necessary to hold the meeting. As far as Corvin's claim is concerned, the company has not the money in the first place, but if they had, I would not be in favor of paying him anything except a nominal fee which, I suppose, he may be entitled to for certain minor matters he took care of.

The Smith people seem to be in the picture yet. I understand one of the causes for their withdrawal was fear of the decrease in the price of gold; in addition to this, of course, they had the matter of T. F. Cole breaking his word to them several times. However, I now think there is a good chance to get them back in if I can induce certain of the other directors to be reasonable, and I think this can be done. They tried operating the property [305] before Smith took it and after I left; and built up a deficit of \$100,000.00. This year they attempted to operate the placer and took out a lot of gold without making any of money. So much for that.

I returned this morning and will endeavor to clean up today and tomorrow whatever there is here of an urgent nature, and will then go to the mine. However, things are going along in a routine way, and our production for November should be as good as it was in October.

We have opened what appears to be a new ore shoot in the Penelas Vein in the 401 North Drift,

and the south drifts on the Victor Vein are looking better. However, regarding underground conditions, I will be able to write you much more intelligently after I have spent two or three days at the mine. One thing seems sure: all of our bills payable will be in fine shape during the month of December, and all other bills paid up; so the beginning of January all profits can go toward liquidation of your notes.

As I have said to you several times, we have been doing probably more development work than we would ordinarily do, but I wanted to do it at a time when I knew what the cost would be, and we would profit later. The payroll has been decreased quite a bit lately, and will be quite a bit less for November than it was for October. As far as the Bonanza is concerned I feel that we are not through there, but, of course, nothing should be done at that point until next summer. We have one very strong vein, well defined, and I am betting that in time it will be profitable. In addition, we have another parallel vein that also looks good, with a chance of opening an ore shoot in it also. However, for the balance of the winter and until the summer season, I think it wise to confine all of our operations to the shaft.

I spent some two weeks at the clinic and remained in La Jolla another week for observation, and to have certain dental work [306] done. I am a great admirer of Dr. Copp and Dr. Marlow, who is a very fine chap also, and I want you to be sure and meet him when you next go there. I am following their instructions to the letter, and I am feeling a whole lot better. In fact, I have gained about ten pounds

and think that my troubles are about over. They are not sure and it might be necessary for me to have a gall bladder operation in the future, but they say they do not feel that it is necessary now. Personally, I think that by strict observation of the diet and instructions, I will have no further trouble.

I will write you fully about mine conditions just as soon as I can do so intelligently.

Helen is well and joins me in kindest personal regards.

Yours very sincerely,

L. D. GORDON.

LDG:ds

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Intervener's Exhibit No. "L". Filed July 6th, 1938. O. E. Benham, Clerk. By, Deputy. [307]

INTERVENER'S EXHIBIT M

Penelas Mining Company

Post Office Box 151

Fallon, Nevada

September 26, 1937

Mr. R. H. White

c/o Cleveland Tractor Company

19000 Euclid Avenue

Cleveland, Ohio

Dear White:

I am leaving for La Jolla via San Francisco tomorrow. I returned from the mine last night.

The ore body is holding well on the 200 foot Victor ore body. The Victor ore body is showing strong on the 100 foot level. We have this vein on a 300 foot level and it is beginning to show values, so I think it is only a question of a few days until we get into the downward extension of the ore body already opened on the 100 and 200 foot levels.

Work will be started on the 400 foot level within a week to open the downward extension of the Victor ore body on that level, so that we are working diligently on all four levels of the mine to open this ore body; and in my opinion, we will open other similar ore bodies south of the shaft. As I have previously stated, we are doing a large amount of development work; more than ordinarily would be necessary but I think it good business to do this work now when we know what it will cost, and we can compensate for it later by less development work if we see fit. In other words, this work will open ore, farther than necessary, in advance of our requirements; but in my opinion, we may do it for less now than later.

I have instructed Dynan to write me once or twice a week and to send you a copy of the letter direct without referring it to me. In this way you will be advised of current development work.

I am enclosing you the Mill Sheet for the second ten-day [308] period. You will notice that on the 15th the tails are unusually high. This assay is undoubtedly incorrect and this is substantiated by Davis. The facts are: this was the first day the new

assayer worked and there were discrepancies in some of the mine assays as well. What he undoubtedly did was to weigh some silver for gold, in other words, he undoubtedly did not part the ore button properly. However, for the purposes of the record, I have put it down just as it was turned in. You may accept my word that it is incorrect as were several of the other assays. The new assayer is settled down and is doing good work; and I think he will be satisfactory. In this respect he is the first Jew I have employed and he certainly should know about gold and silver.

Will write you from La Jolla. Kindest personal regards in which Helen joins.

Yours very sincerely,

/s/ L. D. GORDON.

(Hurriedly)

LDG:ds

Enclosure

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Intervener's Exhibit No. "M". Filed July 6th, 1938. O. E. Benham, Clerk. ByDeputy. [309]

INTERVENER'S EXHIBIT N

Penelas Mining Company
Post Office Box 151
Fallon, Nevada

September 22, 1937

Mr. Rollin H. White
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

I am enclosing herewith the balance of the reports for the month of August, 1937. It should, of course, be kept in mind that we have been doing and are doing now a large volume of development work, including sinking and timbering the shaft, etc.; and it is my thought to continue this for a least a couple of months because we know at this time what the work is costing. A certain amount of this work has to be done and, in my opinion, it is better to do it now than later.

Stoping operations are in progress in the Victor vein on the 200 foot level. The drift was continued but a fault was encountered. However, I think we will have a little trouble in picking up the fault as the indicated movement is not great and I do not think the displacement amounts to more than a few feet. This work is being carried on and when the vein is again picked up the drift will be continued south on the vein.

The Victor has been opened on the 100 foot and a stope has been started. We are also drifting south

on the Victor vein on the 100 foot level in a good grade of mill ore. A raise has been completed from the 200 foot level to the 100 foot level. This raise was in the Victor vein and this connection greatly improves the ventilation. A raise has been started on the 100 foot to prove the upward continuation of the Victor ore body above that level. The vein on the 100 foot level proved to be the Victor vein and not the new vein as was at first thought.

We are drifting south on the Victor vein on the 300 foot level [310] but will have to go probably 60 or 70 feet before we reach the ore shoot. However, I have no fear about this as the vein seems well defined on this level and it is simply a question of drifting to a point below where the vein was opened on the 200 foot level. The shaft has been completely timbered from the 400 to the 300 foot level but as it reached the 300 we had to cut out the work on the 300 foot level for a few days to do the necessary timbering on the 300 station.

We will put in a small sump below the 400 to permit the lowering of the skip to a point where it can be loaded on that level, whereupon a drift will be started on the 400 level south to open the Victor vein. We have a good crew and work is being crowded just as much as possible.

On account of having to draw practically all of the tonnage from development work in the Victor vein and stoping in this vein, our mill tonnage has been somewhat reduced because this ore is full of talc and inclined to slime. If in the future we get the biggest proportion of our ore from the Victor

vein it will be necessary for us to put in another thickener tank to permit of proper settling. This will not be expensive as it simply involves a tank and the stirring mechanism. The power required will not be much and it can be handled with our present installation. However, this is not an immediate consideration as we have available in the stopes on the 400 foot level of the Penelas vein a lot of quartz and granular material, which, mixed with the ore from the Victor vein, will permit of better settling. In addition we have an excellent opportunity to open a quartz ore body on the 400 foot level north. But if it should come to pass that most of our tonnage in the future comes from the Victor vein and the vein continues as it is now, we will have to add another settling tank. As noted before, however, this is not an immediate consideration.

The outlook is better now than it has ever been as we have [311] proved the strength of the ore body to the 100 and 200 foot levels. We have the Victor vein on the 300 and are certain of good ore on that level. Also, I am very confident that within a couple of months we will have the ore shoot on the 400 foot level. Perhaps before that time as the work will be crowded in every possible way.

The Victor vein occurs in andesite which, frankly, I like much better than rhyolite. Andesite has been the productive formation in this state, especially in Tonopah, Virginia City, and the bigger, more productive mining districts. I feel very confident that other veins will open in this andesite. I also feel

that we have a real property and expect to prove it by bullion shipments.

I am planning to leave for La Jolla within a week, but Dynan is on the job. He is thoroughly familiar with every phase of the situation and is a very capable, dependable man. Things are going along in a satisfactory way; by the first of the month I will have practically all of the bills payable on a current basis and upon my return will lay in all supplies against a severe winter so that we may save the expenses we were put to last winter. I do not think there is any chance of having a winter as severe as last winter, but no one knows about this and I will put in a supply of timber, powder, mill supplies, fuel oil, etc. as I think this is a good protective measure. If we do not have a hard winter no harm will be done.

I will see that during my absence you will get all the current information together with reports. I will have Dynan write you at least once a week outlining mining conditions.

With kindest regards to Mrs. White and yourself in which Helen joins, I am

Very sincerely yours,

/s/ L. D. GORDON.

LDG:ds

Enclosure [312]

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Intervener's Exhibit No. "N". Filed July 6th, 1938. O. E. Benham, Clerk. By _____, Deputy.

INTERVENER'S EXHIBIT O

Penelas Mining Company
Post Office Box 151
Fallon, Nevada

August 19, 1937

Mr. R. H. White
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

Thank you for your letter of August 10th, enclosing original letter from Dr. Copp, and copy of a letter from McDaniel.

I agree with you absolutely that all of our energies should be diverted toward opening the Victor vein on the other levels, and this is being done. Work is going forward on the 300 foot level and on the 100 foot level. I will have the vein on the 300 level in the next three or four days; at least, that is my expectation. I do not expect to get ore when I get the vein, as the ore shoot on the 200 foot level is south of where we will encounter the vein on the 300 level. I should have the vein on the 100 level inside of two weeks, and will then start drifting south for the ore shoot on that level.

Work is going ahead raising the shaft from the 400 to the 300 level. We are up about forty feet above the 400 level, have a pocket installed for handling the material, etc. I expect to have the hole through to the 300 level by the first, and to have the shaft timbered from the 300 to the 400 by the 15th of

next month after which work will be started on the 400 level to open the Victor vein on that level.

Everything is going along in a satisfactory manner, but you, of course, appreciate that I am not milling as much tonnage from the Victor ore body as I will be able to do later. We are handling from 45 to 50 tons a day, and we only have one stope in this ore body, and, inasmuch as it is a shrinkage stope, only about one-third of the material broken can be drawn. However, as ore [313] bodies are opened in this vein on the other levels, the biggest proportion of our ore will come from that vein.

It will be necessary to mix some of the more silicious ore with it, as the Victor ore to date contains a lot of clay, which does not settle very well, and it is necessary to have some granular material mixed with it.

I also have your letter of August 17th, enclosing a pamphlet on a petrol-operated rock drill. I agree with you that it would be a good tool for prospecting on top of the ground, as it eliminates the necessity of a compressor. However, it will probably run afoul of the laws of a good many states that require water for settling dust; that is to say, all of the present-day rock drills use a hollow steel with a stream of water passing through the center of the drill to lay the dust. This drill gets rid of the dust by exhausting through the center of the drill, which I don't think is serious, but just the same, it would be contrary to the laws of a good many states.

As far as my vacation is concerned, it is not advisable for me to leave here until the first part of next month. I could not have any rest or peace if I were worrying about the property, and I want to at least get the Victor vein opened on the 100 and 300 levels before leaving. I am not stalling about the vacation you want me to take, and as promised you, I am going to do it, but after all, this job is my responsibility, and I do not want to leave until I feel I can do so safely and that things will go forward properly during my absence. A few days one way or the other will not make any difference, and I will feel much better satisfied waiting a couple of weeks, than to dash off, regardless of conditions at the mine or what my responsibilities are.

I will keep you promptly advised of developments. In my opinion, one thing is a cinch. We have a valuable property, and every bit of development work we do tends to confirm this belief. [314]

Kindest personal regards and best wishes, in which Helen joins, I am,

Yours very sincerely,

/s/ L. D. GORDON

LDG:pp

P. S. I am enclosing for your confidential information copy of a Western Union telegram recently sent from Carson City, Nevada. I also wrote both of our senators and our Congressman along the same lines, and might have been of some small

assistance in having the Black-Connery Bill at least go over until the next session of Congress.

/s/ L.

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Intervener's Exhibit No. "O" Filed July 6th, 1938 O. E. Benham, Clerk. By, Deputy. [315]

INTERVENER'S EXHIBIT P

August 17, 1937

Mr. L. D. Gordon,
Penelas Mining Company,
Fallon, Nevada.

Dear Gordon:

Enclosed you will find a pamphlet on a petrol operated rock drill. It occurred to me that it might be a pretty good tool for prospecting on top of the ground. You could bore a hole and shoot it without carrying an air compressor around with you.

With regard to the veins on the north end of the property, it seems to me that you had better pull the work off of the same while you are away as I do not see why that work cannot be picked up at any time and the important thing at the moment is to get our shaft finished on the 400 foot level and to develop the *Victory* vein on the different levels.

I hope you and Helen will have a good vacation and that you will come back much benefitted from the rest.

With best regards to you both, I remain
Sincerely yours,

RHW-EC [316]

August 10, 1937

Mr. L. D. Gordon,
Penelas Mining Company,
Fallon, Nevada.

Dear Gordon:

I am enclosing a letter from Dr. Copp and I hope you will take your vacation and get to the Clinic before Dr. Copp leaves on September 3rd as I do not think the assistants will do as good a job as the doctor himself.

I am also enclosing a copy of a letter from Mr. McDaniel and I think we should devote most of our *energies* to mining the new vein with the high silver values so as to take advantage of the present high price of silver before the Government changes its mind in regard to the same, which may be during the next session of Congress. I am rather anxious to see what the silver recovery is for July, and was glad you sent me an estimate of your operations for the month.

I have a letter from Byron and I note that he expects to get out the reports by the 15th of the month hereafter. This will be much more satisfac-

tory than getting the June reports in August. However, if he could send me, by the 4th or 5th of the month, the gold and silver values in the mill heads and tails for the previous month, I could get an idea of what the mine is doing ahead of the final operating statement.

With very best regards to yourself and Helen, I remain

Yours very truly,

RHW-EC

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Intervener's Exhibit No. "P" Filed July 6th, 1938 O. E. Benham, Clerk. By, Deputy [317]

INTERVENER'S EXHIBIT Q

Penelas Mining Company
Post Office Box 151
Fallon, Nevada

August 9, 1937

Mr. R. H. White
c/o Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

There has been some delay in answering your letter of July 30 but I had Byron write you about the matter of the reports which letter I trust you have received by this time.

Last Wednesday night we had our first accident of any consequence. A man coming up on the bucket in the 400 winze from the 400 foot to the 300 foot level somehow lost his balance and fell out of the bucket. He fell a distance of about 40 feet and it is a mystery to me why he wasn't killed. In any event, he wasn't. He suffered some rather severe contusions and a broken arm but aside from that will recover and probably be as good as ever in a month or six weeks. It was rather a trying experience as I had worked all day in the mine, came into town with him, and worked with the doctor practically all of that night and returned to the mine the following day. The X-ray pictures indicate that the fracture was properly reduced and that a good result will be had. I did not punish myself purposely or deliberately but after handling accidents of this kind and looking at X-rays for some twenty-five years I wanted to be sure to keep our records clean. Luckily the mine inspector happened to be at the mine when it happened, made a thorough inspection, rode in the bucket himself and everything is one-hundred per cent.

I do not want to leave before September 1st, as I want to get things in shape so that I can leave and not be worried about mine conditions during my absence. [318]

We have completed the sill floor for the 200 south stope in the Victor vein and began drawing ore from that stope on the 7th of this month. The car samples from this stope on the 7th showed \$24.63 and on the

8th \$30.00. The mill heads for the 7th were \$21.55 and for the 8th \$22.83. I do not expect to maintain average mill heads of this grade as I am starting to drift south on the Victor vein on the 200 foot level and it will be good business to put the ore coming from this drift through the mill if it is high enough to better than pay the milling cost, as in driving the drift the material will have to be broken anyway and there is no sense in throwing away material that will show a profit. I expect to have the ore in the Victor vein on the 300 foot level before I leave and there is an excellent chance that I will also have the same ore on the 100 foot level. I do not expect the shaft to be completed and timbered before my return so as soon as it is completed after my return I will devote my attention to opening this same ore body on the 400 foot level.

As to your inquiry regarding the silver going through the mill we did not get a sufficient proportion of this new ore carrying higher values in silver during the month of July to give us a line on this phase of the matter but this month will indicate pretty well what can be done and you will, of course, be advised regarding this. Davis has been absent since your departure until a couple of days ago, as I explained to you in a previous letter. He is now on the job and I will discuss with him the matter of making some experiments to determine whether or not an additional silver recovery can be made. I am sure that theoretically and metallurgically it can be done, but I am still doubtful if it can be done on

a commercial basis, that is to say, whether the additional silver recovery we could make would pay for the cost of making it. However, I will reserve any fixed opinion on this until Davis has had a chance to make some definite tests and submit his [319] report.

Yes, I agree with you that all efforts should be centered on developing and milling the ore from the new Victor ore and the procedure I have outlined above will indicate to you that I am bending all efforts toward this.

As to what Congress will do that is something, of course, no one can foretell, however, I think, the day has passed for Congress to blindly accept every recommendation of the President. I have noted the agitation in many newspapers and periodicals regarding gold and silver and while my guess probably isn't as good as the guess of some of the people I do not expect to see the price of gold changed, as after all this country and Great Britain are the two principle financial countries of the world. Great Britain produces something more than 60% of all the gold in the world and British Statesmen are not especially noted for unselfishness, consequently I think we are safe on the gold situation. However, I am not so sure about silver and it may be that something will be done about altering the present silver set up. Regarding this, however, there will be a very determined bloc in the Senate composed of western Senators and Senators allied with the smelting industry—and that will compose probably twenty-eight to thirty Senators. I think you will

agree that this will be rather definite opposition to any change in the silver set up and will at least delay altering the present status of silver. I am very frank to say to you that from a broad point of view I doubt the administrations silver policy. I have always said that had the administration purchased all newly mined American silver at even \$1.00 an ounce and put the matter upon an unemployment basis, if no other basis, domestic and world conditions would have been less disturbed and this country probably more benefitted.

As to the work in the tunnel out north, to date this work has not brought the result I had expected but there are two or three [320] veins and it might be that I started drifting on the wrong one. I did get some assays as high as \$10.00 from the vein I was drifting on but reached the conclusion that we had drifted a sufficient distance to the south on the vein to reach the ore shoot indicated on the surface and I am at the present time drifting on the vein parallel to the one upon which I have been doing the drifting. Considering the fact that we have an indicated ore shoot on the surface 200 feet long showing satisfactory values and greater strength than on the surface in the vicinity of the Penelas shaft I think this work should be continued for another month for the following reasons: We can do the work cheaper now than in the future as we are all set and are going ahead out there. After spending the preliminary money we had in that region it would be foolish not to satisfy ourselves that our objective has been reached, in other words, while we

are all set and going I think it cheaper to determine now than later the value of this work. In this I think you will agree.

I am enclosing the mill head statement for the month of July. It will show that we got around 95% of the gold and a total extraction of gold and silver of around 89% which is just about what all well managed mines of this type get. However, if this can be improved we certainly want to do it.

I want to thank you for writing Dr. Copp. It was very thoughtful of you and I am writing him today.

Regarding the comb you took with you. I thought this was a very good joke as your practice in the past, and even on your last trip, has been to leave things rather than take them. However, the comb was received and I trust you received the small articles I mailed to you that you left when here.

With kindest personal regards and best wishes in which Helen joins, I am

Yours very sincerely

/s/ L. D. GORDON

LDG:nd [321]

July 30, 1937

Mr. L. D. Gordon,
Penelas Mining Company,
Fallon, Nevada.

Dear Gordon:

Enclosed you will find my check for \$5,000 which I hope will be the last for the mine.

I am in hopes that you can get away by the 20th, but presume that with your development work you will want to stay on the job a little longer.

I am enclosing a copy of a letter which I have written to Dr. Copp and I am sure you will find him a very able person.

I am wondering whether, with so much silver ore going through the mine, it has made any difference in your recoveries. In your letter you said nothing about reaching the ore in the property to the north. I have been wondering if it is going to be rich enough to make it profitable to mine.

It seems to me that we ought to put our efforts into developing and milling the new Victor vein and I am not sure that the price of silver or gold will remain much beyond another Congress which meets next winter. There is a lot of talk in the eastern papers and Washington letters about the present price of gold and silver being too high, so we ought to make the most of it while the price holds.

I am sorry I ran off with one of your combs for in packing I am usually minus articles instead of collecting them.

With very best regards to both yourself and Helen, I remain

Yours very truly,

RHW-EC [322]

PENELAS MINING COMPANY
GOLD & SILVER VALUES IN MILL HEADS & TAILS

JULY, 1937

(Computed from Daily Reports—Penelas Assay Office—Gold @ \$35.00 oz.—Silver @ \$.77 per oz.)

Date	HEADS			Tons	Total Value	TAILS			Tons	Total Value
	Value per ton Gold	Value per ton Silver	Total			Value per ton Gold	Value per ton Silver	Total		
1	\$ 5.95	\$ 2.08	\$ 8.03	40	\$321.20	\$.42	\$.54	\$.96	40	\$38.40
2	8.75	5.08	13.83	45	622.35	.35	.69	1.04	45	46.80
3	10.50	5.24	15.74	45	708.30	.59	1.00	1.59	45	71.55
4	7.40	3.70	12.10	45	544.50	.80	1.08	1.88	45	84.60
5	7.70	2.77	10.47	45	471.15	.59	.92	1.51	45	67.95
6	7.00	3.70	10.70	11	117.70	No tails—filter down				—
7	7.70	2.16	9.86	45	443.70	.35	.69	1.04	45	46.80
8	8.05	4.00	12.05	45	542.25	.56	.77	1.33	45	59.85
9	9.45	2.77	12.22	42	513.22	.59	.77	1.36	42	57.12
10	7.70	2.46	10.16	40	406.40	.59	.77	1.36	40	54.40
11	10.50	3.85	14.35	43	617.05	.59	.77	1.36	43	58.48
12	10.50	3.62	14.12	44	621.28	.35	1.00	1.35	44	59.40
13	20.30	3.23	23.53	42	988.26	.45	1.00	1.45	42	60.90
14	13.12	3.5	16.27	45	732.15	.59	.92	1.51	45	67.95
15	9.80	2.38	12.18	46	560.28	.59	.92	1.51	46	69.46
16	8.75	2.23	10.98	45	494.10	.59	.77	1.36	45	61.20
17	8.05	2.08	10.13	46	465.98	.70	.92	1.62	46	74.52
18	14.70	4.39	19.09	44	839.96	.59	.84	1.43	44	62.92
19	14.70	4.08	18.78	46	863.88	.80	.84	1.64	46	75.44
20	8.75	2.00	10.75	42	451.50	.59	1.00	1.59	42	66.78
21	5.95	3.00	8.95	43	384.85	.35	2.23	2.58	43	110.94
22	9.45	1.77	11.22	50	561.00	.56	.77	1.33	50	66.50
23	7.00	1.39	8.39	46	385.94	.45	.77	1.22	46	56.12
24	11.20	5.31	16.51	46	759.46	.45	.84	1.29	46	59.34
25	8.40	3.00	11.40	43	490.20	.59	1.23	1.82	43	78.26
26	8.05	2.08	10.13	46	465.98	.59	1.15	1.74	46	80.04
27)										
28)										
29)	Mill down—for Diesel Power Plant Overhaul									
30)										
31)										

Tons	1,120		1,109
Total Value, Gold & Silver.....	\$14,372.66		\$1,635.72
Average per ton, Gold & Silver.....	12.832		1.475
Gold—			
Total Value	10,878.30		607.59
Average per ton.....	9.712		.548
Silver—			
Total Value	3,494.36		1,028.13
Average per ton.....	3.120		.927

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada, Intervener's Exhibit No. "Q"
Filed July 6th, 1938. O. E. Benham, Clerk. By _____, Deputy. [323]



DEBTOR'S EXHIBIT No. 2

PENELAS MINING COMPANY

Development Work

Drifts and cross-cuts	100 N.-598'	100 S.-507'	Total—1105
Drifts and cross-cuts	200 N.-1056'	200 S.-710'	1766
Drifts and cross-cuts	300 N.-1113'	300 S.-992'	2105
Drifts and cross-cuts	400 N.-657'	400 S.-555'	1212
Drifts and cross-cuts	500 N.-345'	500 S.-69	414
Drifts and cross cuts	600 N.-71'	600 S.-71	142
			<u>6744</u>

200 Level Raises.....	100
300 Level Raises.....	140
400 Level Winzes.....	150
Shaft completed and timbered to 600 level	<u> </u>

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 2. Filed June 29th, 1938. O. E. Benham, Clerk. By....., Deputy. [324]

DEBTOR'S EXHIBIT NO. 3

Penelas Mining Company
Post Office Box 151
Fallon, Nevada

November 10, 1937

Mr. R. H. White
% Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

Thanks for your letter of November 9 received this morning.

As to the subject matter of the telegram you enclose; This matter has been taken care of, and, as a matter of fact, was entirely due to my absence. Had I been here, I could have handled the thing personally with Friedhoff. They have been continually advancing the due date of these payments, and I certainly did not want to turn over any money to Mr. Roosevelt until it became absolutely necessary. As matters stand now, we are paying half the amount due, this month; and have until the end of the year to pay the balance, but I will pay the full amount this month. In other words, I had proposed not to pay this money until I had to as I wanted to give preference to our commercial accounts.

I will, of course, come back any time you want me to; but, frankly, I am very much disturbed over your thought that you might be considering selling

the property. As a matter of fact, we are just now hitting our stride. Our profit for the month of October will be at least \$7,000.00, and profit for the month of November will be \$8,000.00 or more. On the first of December, I hope to have all bills payable paid in full and be in a position to discount our December bills. During the month of December, I shall build up a reserve, and beginning with January will be able to send you at least \$5,000.00 a month to apply upon your notes; and I am sure that this can be continued every month next year. This, to me, [325] should cause you to give the matter serious consideration, as I do not know of anything as desirable as the property such as we have.

We, of course, have gone through the various "growing pains", etc. and have met with some disappointments, but this is usual in most things and especially in mining, but we are now on our way. Properties of this kind are extremely scarce, and the entire world is being combed for desirable things in the gold mining field. One thing that especially appeals to me is the fact that the operation can be entirely controlled by us, which is not true in most enterprises, where a large overhead must be constantly maintained as well as a large output, or big losses insue. In a thing of this kind, we can absolutely regulate our needs, and the product we are producing does not deteriorate.

I can well imagine your being disturbed over certain faulted conditions in the country south of the

shaft applying to the Victor Vein, but can say to you that the three greatest mining concerns we have had in the west; viz. Virginia City, Tonopah and Goldfield were constantly disturbed by faults. As a matter of fact, a highly faulted country is generally the country where the best ore bodies are found, and this applies especially to mines of this type. I think Mr. McDaniel will confirm this. Again, ore bodies are not put in a *vien* with any geometric precision, and I have absolutely no doubt of opening the same character of ore on the 300 and 400 levels in the Victor Vein as we did on the 200 level. Developments can not be made just as we think, and they are not always made as expected. An instance of this is the fact that starting the drift on the 400, north on the Penelas Vein, we have not had much encouragement. However, we have now opened what appears to be a very good ore body on this level. For the past 25 or 30 feet, we have had five feet of ore from \$10.00 to \$30.00 with practically all of the values in gold. This development is extremely important, [326] and greatly increases the value of the mine; and justifies the belief that the Penelas ore body will go on down and prove to be as productive in the lower levels as it was in the levels above. With the opening of this ore body, we can probably curtail some of the development work and thereby reduce our expenses. In addition, during the winter months, I will be able to get the shaft down to the 500 level with a chance of opening the downward

extension of the Victor and Penelas ore bodies on that level.

Everything is going good, and I want you to have an open mind for the next two or three months, as I am satisfied you could not get into anything that would offer the profit and be as easily controlled as this property. I can assure you that there is no *weakness* in the thing, and now that we have our development so far along, there is no question about maintaining production and profits indefinitely.

It is true, that due to many delays in the initial stages of the mine, the fact that the cost of completing certain projects, especially making a real shaft out of the Penelas shaft, was greater than anticipated. You may have been somewhat disappointed, but this is all history now. The fact remains that we have a well-controlled, splendid little property, for which we have paid \$25,000.00 of the purchase price out of earnings; that by the first of December, I will have paid off \$20,000.00 indebtedness existing at the time the mill started; and will be making a minimum profit of \$5,000.00 a month from now on. It makes a picture that is hard to duplicate. We have not begun to exhaust the possibilities of the mine. We have an excellent chance to get ore east of the shaft, in the vein opened in the 300 level east crosscut, to say nothing of the Penelas Vein, the Leader Vein, and the Victor Vein. I feel quite sure other veins will be developed.

I will write you again in two or three days giving you all the latest developments. [327]

Helen joins me in kindest personal regards.

Sincerely yours,

/s/ L. D. GORDON

LDG:ds

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Debtor's Exhibit No. 3 Filed June 30th, 1938 O. E. Benham, Clerk, By....., Deputy. [328]

DEBTOR'S EXHIBIT NO. 4

December 8, 1937

Mr. R. H. White
% Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear Mr. White:

I am again on the job. First I want to thank Mrs. White and you for your courtesy and hospitality during my recent visit to Cleveland.

I am enclosing an estimate made of the gross production for the month of November before the final cleanup has been made and before any allowance for tailings loss. The actual bullion shipments for the month were \$22,953.88 so that the bullion shipments were better than 90% of our estimate of the gross production without allowance for tailings loss.

Coming now to the matter of a disposal of your interest or possibly a disposal of the mine itself. On November 9 you wrote me as follows: "I have in mind discussing, perhaps, the possibility of a sell-out at this time, and you might be giving the matter some thought in the meantime."

During my absence, on October 22, you wrote Dynan for a blueprint of the workings of the mine, stating that Mr. McDaniel was in Cleveland and you wanted to go over the map with him. On October 25 you wired him for this same data. Everything was sent you as requested and when I left on my trip to the Clinic, which was at your insistence, I advised Dynan to write me at regular intervals regarding mine development and to send you copies of the letters.

When I arrived in Cleveland I took for granted that McDaniel had made no effort to dispose of the property, and certainly had not discussed it with anyone prior to your [329] discussing it with me.

During our lunch at the Union Club, Mr. McDaniel mentioned that he had been to New York and I immediately became somewhat apprehensive. You will recall that after we returned to your home from the club for the purpose of going over the map there was certain discussion about the mine, contemplated work, etc. I then excused myself for the purpose of packing my grip so as to be ready to catch the plane that evening at your suggestion. Upon my return Mr. McDaniel had shown you two *letter*, one from

a man by the name of Skinner and one from another mining engineer whose name I do not now recall.

As far as Skinner is concerned, he has occupied a nominal position with Hayden, Stone & Company, a New York stock exchange house, for the past twenty-five years. His function, as I have always understood it, has been to discuss with the clients of Hayden, Stone & Company, mining stock investments as related to listed stocks and has endeavored to do whatever he could by way of promotion on the side. There isn't a mining man or prospector anywhere in the country who could not have access to Skinner and I consequently was much surprised to think that the "people" Mr. McDaniel had in mind turned out to be Skinner. It was my impression at the time and is now that you were somewhat surprised at the tone of Skinner's letter, and the fact that Mr. McDaniel's "people" turned out to be a couple of New York mining engineers.

I left Cleveland by the fastest method of transportation known to date. In Chicago a mining engineer with headquarters in California got on the plane. I had no opportunity to speak to him until we reached the Salt Lake air port; but having known him a great many years, we were chatting in the air port while waiting for the plane to take off for Reno. He said to me, "I understand your partner is trying to sell out." I replied, "Is that so? Who told you that?" and he replied, "Skinner, in New York". He [330] seemed to have a very good understanding of the underground workings and all about

the mine; and so far as I know he has never had any connection with Hayden, Stone & Company.

I am reciting all of the above for the sole purpose of conveying to you that you may be defeating your own purpose, and it certainly seems to be a fair assumption that Mr. McDaniel had with him the maps of the mine and undoubtedly other data in New York before I had an opportunity to discuss the matter with you. I am not arguing against your proposal or what you want to do, but I am saying to you that the mining fraternity is not so big. There is a certain "grapevine" that reaches to everybody in the business in a very short time if things are not carefully handled. I took for granted that Mr. McDaniel was dealing with principals and not with mining engineers who might know other mining engineers who might know somebody looking for a mine. He made no mistake when he said he knew of people looking for a mine because, as a matter of fact, everybody in the business knows of people looking for a mine; but I certainly did not think he was depending on his approach by giving his opinion to everyone in the country. If anything should ever be done now with Skinner, it would probably mean a commission to McDaniel, a commission to Skinner, and probably to some other engineer.

It is my thought to endeavor to induce some principal to buy your interest; and while it is conceivable that a small commission will be necessary to get the proper approach, it is not my position to endeavor to "peddle" the property. I am very

much afraid that the thing will be generally known all over the country—even in Nevada, on account of the activity of Mr. McDaniel, and without asking you to change your present position, I am asking you to write him a letter stating that you have changed your mind about any sell-out at this time. This only for your own benefit and to allow these rumors to quiet down and [331] give me a chance to deal with somebody who is really a principal and who has the necessary money to make the deal, as otherwise I will be told that they have already heard of it and that attempts have already been made to “peddle” it in New York City. I want you to know that all of the above is said to you as an associate and a partner and without any prejudices; and that you may accept at its face value everything I have said with relation to the above.

The showing on the 400 is developing nicely and you will receive all information as you have in the past. I am asking as a favor and for the sake of both of us that you do as above requested regardless of what your position may be.

With kindest personal regards and best wishes,

Yours very sincerely,

/s/ L. D. G.

L. D. GORDON

LDG:ds

Enclosure

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Debtor's Exhibit No. 4 Filed June 30, 1938 O. E. Benham, Clerk. By....., Deputy. [332]

DEBTOR'S EXHIBIT NO. 5

December 6, 1937

Mr. L. D. Gordon,
Penelas Mining Company,
Fallon, Nevada.

Dear Gordon:

I wish to confirm our conversations of last week while you were visiting Cleveland as follows:

On the 1st of January you are to start negotiations with the prospects you have in mind for the sale of the mine. The asking price is to be \$500,000 with at least \$250,000 down payment with the balance in notes, and all ore taken out of the mine on a royalty basis as much as possible. On the 1st of February we are to allow Mr. McDaniel to enter the field and see what he can do in regard to the sale of the mine. We also agreed to protect Mr. McDaniel on the commission on the one prospect which he has already worked up—in case the deal with that prospect is made. Mr. McDaniel's commission is to be ten per cent (10%) of the cash down payment on the mine and five per cent (5%) on any payments received thereafter.

It is understood that if we get an offer of \$300,000 to \$350,000 with a down payment of around \$200,000 the matter must be brought to my attention immediately for a decision as I indicated that I would be willing to sell for that price.

It is my thought that the mine should be operated on a normal basis for the next three or four months and that there should be no high-grading or undue increase in the working force which would unduly change the normal working of this mine without first taking it up with me and getting my permission. I have no objection, for the next thirty days to your putting on five or six extra miners for [333] development work over what you had on during November, as I do not believe this would change the picture very much as regards profits and normal production. If you think otherwise, I wish you would write me.

If some new, rich strikes should develop at the mine which, in your opinion, would make it advisable for me to reconsider the sale of the mine, I would be glad to reconsider the matter on that basis. However, as I am going away for the winter and it is not very advisable for me to come to the mine, I shall probably ask Mr. McDaniel to appraise the situation for me as I have the highest regard for his integrity and judgment.

I thought while you were in Cleveland that you were in much better health than when I last saw you, which was gratifying to me, and I hope Helen is likewise.

With very best regards to you both, I remain
Sincerely,

RHW-EC

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Debtor's Exhibit No. 5 Filed June 30th, 1938 O. E. Benham, Clerk. By....., Deputy. [334]

DEBTOR'S EXHIBIT NO. 6

December 17, 1937

Mr. Rollin H. White
% Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

Your registered letter of December 6 reached here December 10 but for some unknown reason was not delivered to the office nor did we receive any notification until today. This will be shown by the date on the receipt that Byron James signed.

Regarding our understanding while in Cleveland: the first paragraph of your letter is correct except that you stated to me that if I had opened negotiations with anyone that there would be no interference until these negotiations had been brought to some sort of conclusion. In as much as that was your voluntary statement just before I left your home, I can not agree to the second paragraph of your letter. In other words, Mr. McDaniel could not definitely

be given the right to start negotiations on February 1 if I already had somebody interested in the property. This is, in any event, a matter of ethics and I know that Mr. McDaniel will agree that I am absolutely right in this. I know that he would take the same position were he in my position and I in his.

During all of our conversations in Cleveland you stressed the point that it was desirable for me to make the deal for a great many reasons. Consequently I can not agree to notifying Mr. McDaniel that he is free to proceed on February 1 as it is my purpose to endeavor to deal with responsible principals and not attempt to "peddle" the property to mining engineers who might know of somebody that might know of a principal. I know that you will agree with me that it would not be fair to the people I might be attempting to interest or to myself to inject some different angle [335] into the procedure during these negotiations.

I can say to you frankly that it would only result in confusion and might result in both parties quitting. I am perfectly willing to have you submit this to Mr. McDaniels as a matter of ethics in this business. I am naturally desirous of getting what I can not only for you but for myself and I see no reason to give McDaniel or anyone else a commission if it can be saved. Personally I like Mr. McDaniel very much and have every confidence in his ability and integrity, but I do think that in view of the way he has proceeded it may end up with two or three people claiming commissions. However, it should be

definitely understood that if I am dealing with responsible parties during January no interference of any kind is to be injected into the situation.

As a matter of ordinary business honesty, any amount less than the amount you specify would be submitted to you. The mine will be operated on a normal basis for the next three or four months and, as a matter of fact, I do not think it necessary at this time to increase the working force. If it seems desirable a little later I will most certainly advise you. The mine has never been "high graded" and will not be.

I expect to open additional ore, and I feel reasonably sure that I will ask you the fore part of January to either come to the mine yourself or send Mr. McDaniel with a view of reconsidering your present position.

The situation at present is this: I went away on a vacation which was not at my suggestion and I did not have the control over the situation I would have had were I personally on the job. I protested about going and spoke to you about the notes falling due, and you said not to trouble myself about that, that a few months more would not matter. During my absence, Dynan kept on a very large crew and did not draw much ore from the Victor ore body. I knew this, but in view of what had been said to me I [336] wasn't disturbed about it as I figured the condition could be easily remedied upon my return. Upon my return I wrote you regarding all this and told you we would get the benefit from this expendi-

ture in development work. For the last 3 months of this year the operation will show a net profit of \$22,500.00 which I submit, even in view of your large investment, is a pretty fair showing; and this has not been done with any "high grading" in view, as October and November had already passed before I received any information that you had been discussing with McDaniel the sale of the mine.

I am going to open the Victor ore body on the 400 Foot Level. I feel very confident of this and I believe it will be as good if not better than on the 200 Foot Level. It should be easy to open on the 400 Foot Level providing we get it on the 300 as we are pretty well on with the 400 work. I already have opened two new stopes on the 400 Foot Level North and in my opinion there is no question about both veins going down several hundred feet deeper as the showing on the 400 Foot Level North in the Penelas Vein is as good as we have ever had anywhere in that vein on any level.

All of the above is not to argue or try to dissuade you but the fact remains that a real property only comes along about once every twenty years and I am absolutely satisfied we have one. If it is what I think it is, your investment could develop into a comparatively small matter. The only thing the Penelas Mine can be compared to is the Wonder Mine in the same general vicinity, having the same general geology. The ore went down 1900 feet and the mine paid over \$2,000,000.00 in dividends. This

is not wild talk as I feel I am interested the same as you are.

The mill has not been in operation two years yet. I can begin returning your investment during January at the rate of \$5,000.00 per month and without reducing our ore reserves as I expect to continually keep as much ore in sight as we now have. [337]

The bumps have been ironed out. We know more about the property now than we have ever known and we will have no indebtedness except to you on the first of next months.

I think this should be your position; and I am asking you to assume it: If I open the Victor Vein on the 400 Level by the first of January and it is as good or better than the 200 Level, you give me another thirty days to open the same vein on the 400 Level and then send McDaniel out to look the situation over. Don't think for a moment that I am not definitely keeping your interest in mind in this respect. We are both in the same boat and I have nothing to gain by taking a position *detramental* to both of us.

Please do not assume that the above is due to what you might call (Mining Engineers optimism). I think the above is fair and reasonable, is not asking for any unnecessary delay and if I fail to do as above stated I will start negotiations on the first of January as suggested with the understanding that I am to have no interference until the people I have in mind have a chance to look over the property, arrive at their conclusions and either reject the

proposition or make some sort of an offer for the property.

It is very conceivable that with the new showing on the 400 Level if I can get the Victor ore body on the 300 and 400 Levels I will have almost enough ore proved to more than guarantee all of your investment. I think I have had as much experience as anybody has had in this business with this particular type of mine, and I think that the next two or three levels, at least, will be as good if not better than the ones we have opened. This again is not optimism as the geological conditions on the 400 Level indicate that the best of this new 400 ore body is below us and I am prepared to prove this to any capable mining engineer.

This I think covers most if not all of the subject matter in one of your registered letters. [338]

With kindest personal regards.

Yours very sincerely,

L. D. GORDON

LDG:ds [339]

December 17, 1937

Mr. Rollin H. White
% Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

Regarding your letter of December 6: all of the reports you have been receiving you will continue to receive.

Since my return Dynan and I both have been very much occupied with mine matters. In addition Anderson is here auditing the books and naturally Byron's time has been entirely occupied. As our fiscal year ends November 30 there is always some delay in getting out the November report as certain adjustments are necessary at the end of each fiscal year. However, Byron has been advised of the necessity of getting this report to you and it will be sent you just as soon as possible as Anderson should be through day after tomorrow. In other words, you may rest assured that you will receive all the information in the future that you have received in the past.

My health was good upon my return from La Jolla. However, since my return from Cleveland there has been a return of the old trouble as Dr. Copp said that a lot of it was due to worry and nervousness.

One thing bothers me more than anything else and I am going to ask you to give me a frank answer. I can not reconcile your present attitude with the position you took when you were last at the mine. I have always felt that I enjoyed your confidence and that you had no reasons to doubt any statements I might make or any action I might take. Your recent letters give the impression that you are suspicious and that I might do things for some reason or other which one honorable partner would not do to another. I certainly would like some light on this. I feel that if anything [340] has been said

to you that in any way has changed your opinion I should have a right at least to be heard. I think you will agree with me that this is fair.

With kindest regards to you and Mrs. White in which Helen joins,

Yours very sincerely,

L. D. GORDON

LDG:ds [341]

RECEIPT FOR REGISTERED ARTICLE
NO. 618

15 fee paid. 1 class postage paid. 12-18, 1937

Declared value, \$..... Surcharge paid \$.....

From (Sender) Penelas Mining Co.

.....(Street and number)

.....(Postoffice and Stage)

Addressed Rollin H. White, 19300 Euclid Ave.,
Cleveland, Ohio. Postmaster, per W.

Dec. 17, 1937. Fallon, Nev., Dec. 18, 1937. Registered. [342]

December 17, 1937

Mr. Rollin H. White
% Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

While the entire matter is being discussed I might as well give you all of my thoughts regarding the situation.

If I should be successful in opening the Victor ore body on the 300 and 400 Foot Levels and in spite of this you still feel that you want to dispose of your interest, and I prefer to continue; you should, I think, give me the opportunity of getting someone to take your position, if possible, providing they return to you the amount of the notes you hold plus all interest, plus the amount of your stock investment plus interest on same to date of the deal.

I think this is no more than fair. As far as the Wild Rose venture is concerned, I paid half of that out of my salary, the other half was taken from your salary. That, it seems to me, should end that. As far as Buckhorn is concerned you advanced \$2,500.00 and I advanced \$500.00. If I return to you \$1,000.00 we will be fifty-fifty on that.

Understand, if I can do what I hope to do I would like nothing better than to have you return your interest, but if in spite of anything I might do, you still are desirous of getting out I think you should accept a return of your investment with interest on it in case I can get somebody to take your place.

With kindest personal regards

Yours very sincerely

L. D. GORDON

LDG:ds

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Debtor's Exhibit No. 6. Filed June 30, 1938. O. E. Benham, Clerk. By....., Deputy. Copies of 3 letters. [343]

DEBTOR'S EXHIBIT NO. 7

Rollin H. White
19300 Euclid Avenue
Cleveland

December 13, 1937

Mr. L. D. Gordon,
Penelas Mining Company,
Fallon, Nevada.

Dear Gordon:

I am in receipt of your letter of December 8th and if there is any blame in generalship in selling the mine it certainly rests on my shoulders.

What McDaniel did in New York was to make inquiries at my instigation and to say to them that there might be a mine on the market later. He did not show them any maps as he did not have them with him. Any information about the property which he could give them verbally, I see no harm in giving as long as the approach was made.

I have been in a lot of deals of selling out and buying and in former deals it has always been the buyer who wanted to keep the matter a secret and not the seller; in fact, nearly all of these deals have worked out to the advantage of the seller and a quick consummation of the same if there was more than one party interested. I do not believe that any harm has been done towards the selling of the mine and after all, any sale has to be made on its merits.

In regard to writing McDaniel a letter, his present position is that he has pulled off until he is given the go ahead and it seems to me that this covers

the ground just as well as my writing a letter double crossing my intentions; in fact, I never have done it and I am too old to start. I leave that to the New Dealers and Roosevelt.

It occurred to me that if there is any merit in secrecy [344] in regard to the sale of this mine from a practical standpoint, either you or McDaniel should go ahead with the matter at once.

Considering the pro and con of the situation, if you opened up new veins, the delay is favorable, if you do not open up new veins, the delay is unfavorable.

I have lost more money on sell outs than I ever made by not selling when conditions were favorable holding onto the property thinking I could get a larger profit by so doing. I presume it's greed in everyone's make up.

I think that Rowson should be advised of the situation so that he will co-operate in any rumors which he receives. I am sending him copies of my last two letters for after all, he is a Director and Secretary of the company and I think highly enough of him that he will conduct himself in our interest.

With very best regards to yourself and to Helen, I remain

Yours very truly,

/s/ ROLLIN H. WHITE

RHW-EC

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada, Debtor's Exhibit No. 7; Filed June 30th, 1938 O. E. Benham, Clerk. By....., Deputy. [345]

DEBTOR'S EXHIBIT NO. 8

December 15, 1937

Mr. Rollin H. White
% Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

I am glad to have your letter of December 13. From statements made to me by the engineer, I met on the plane, McDaniel had a lot of information to give out; such as the lengths of the ore shoots, the value of the ore, and other things. If he did not have the map sent on to you, he certainly had made a lot of notes from it.

You will recall in the letter from one of the mining engineers, to whom Mr. Skinner apparently had referred the matter, this statement is made, "I might be interested in looking at the property providing it hasn't been knocked about".

By "knocked about" he meant just what McDaniel has been doing, viz. attempting to "peddle" the property.

It is not my purpose to argue with you about the proper procedure to be followed in selling a mining property or an interest therein; but as you made the statement to me in the presence of Mr. McDaniel that I had gotten you into the thing, and it was up to me to get you out, I felt I was being no more than fair if I gave you my thoughts in the matter; and while there is no question about your having

had more experience in the selling of property than I have had, I do think that probably I am more familiar with mines and the methods to be employed and am submitting without reservation this statement: "If a mine is for sale and everybody hears about it, the chances are the price will be beaten down rather than raised." Another thing is if one bunch of engineers looks at a thing after it has been widely advertised and a deal is not made, there is every probability that others will fail to look at it [346] because, believe it or not, the word gets around very fast. If the responsibility is placed upon me to get you out, it would seem to me that I should be permitted to do it in a way that I think is best,—in view of thirty years experience in no business except mining.

I regret very much the statement you made in your letter that I would ask you to doublecross anyone; and I also regret that you would for a moment think I would in any way compare you to Roosevelt and the New Dealers. In as much as this matter was discussed with McDaniel and he was authorized to go to New York in an endeavor to "peddle" the property before the matter was discussed with me, I felt that any harm he had done thereby, should be temporarily remedied as a matter of fairness to me.

Doublecrossing is a word that we in the West dislike very much, and my record is an open book as far as honesty is concerned. I have yet to be ac-

cused of doublecrossing anyone or asking anyone to doublecross anyone else.

We are opening new ore bodies on the 400 Level. We shipped \$7,000.00 for the first ten-day period in December. Other than this there is nothing of great importance to report from the property.

I can only say in closing that I maintain what I have maintained in the past, and that is: in a matter of this kind, principals should be dealt with. A property should not be "peddled" and in addition, such "peddling" may involve you in commission claimed by a half-dozen or more men.

With kindest personal regards to Mrs. White and you in which Helen joins.

Yours very sincerely,

L. D. GORDON

LDG:DS

[Endorsed]: No. A-30-A, U. S. Dist. Court, District of Nevada, Debtor's Exhibit No. 8. Filed June 30th, 1938. O. E. Benham, Clerk. By....., Deputy. [347]

DEBTOR'S EXHIBIT NO. 9

Western Union

Hobe Sound, Florida

December 25, 1938

Mr. and Mrs. L. D. Gordon
Fallon, Nevada

Merry Christmas to you and Helen and the organization. Don't worry. I am anxious to sell out

to best advantage if you will make me a firm offer for my holdings. I will consider it if you wish to make me a offer for your holdings. I will consider that at the moment I wish to be in trading position

R. H. WHITE

[Endorsed]: No. A-30-A, U. S. Dist. Court, District of Nevada, Debtor's Exhibit No. 9. Filed June 30th, 1938. O. E. Benham, Clerk. By....., Deputy. [348]

DEBTOR'S EXHIBIT NO. 10

January 29, 1938

Mr. R. H. White
Hobe Sound, Florida

Dear White:

I am enclosing you statement of production for the last three months of 1937; also statement of stoping and development broken down for the month of December, 1937. I am mailing you under separate cover reports of Ernst & Ernst covering the fiscal year ending November 30, 1937.

For well founded reasons, I have not been able to give any attention to the matter of digging up someone to buy your interest or the sale of the property. Helen became seriously ill right after Christmas and ten days ago I took her to Reno to the Saint Mary's Hospital. She had a blood transfusion the next day, and a couple of days later

underwent a very serious surgical operation. She had another blood transfusion today. While her condition is as good as can be expected, she is not yet out of the woods.

Regardless of what Mr. McDaniel may think, I feel that an intimate association with the property should give *me me* as good an idea as he got with a three day visit; and I am saying to you as an associate that the mine is not in shape right now for investigation, either for a sale of your interest or a sale of the property. Results in the Victor Vein area have not been satisfactory on the 300 and 400 Foot Levels, and before we can ask a price for the property that will do us much good we should have the ore on the 500 Foot Level. I am sinking the shaft to that level now and have well founded reasons to expect better results there than anywhere in the mine as the 400 Foot Level has been about the best to date and the showing there is stronger than on the levels above, especially to the north.

I might say to you that I have a couple of people in view who might be interested in taking over your interest, and as soon [349] as the situation justifies, hope to make you an offer that will at least put you in the clear. In any event, I am getting results and conditions are in better shape than they have ever been since we started as far as the financial situation is concerned. I will make it my job to see that the good results continue.

With kindest personal regards to Mrs. White and yourself, I am

Yours very sincerely,

L. D. GORDON

LDG :ds

Enclosures.

[Endorsed]: No. A-30-A, U. S. Dist. Court, District of Nevada, Debtor's Exhibit No. 10. Filed June 30, 1938. O. E. Benham, Clerk. By....., Deputy. [350]

DEBTOR'S EXHIBIT NO. 11

February 11, 1938

Mr. R. H. White
Hobe Sound, Florida

My dear Mr. White:

Rowson called me this morning and read me your telegram to him of February 10, and in response thereto I wired you as per enclosed confirmation.

I have endeavored to the best of my ability to keep you informed and it is true that for the past several weeks Dynan has not written you a weekly letter. You will recall that these weekly letters were not started until I was induced to go to La Jolla which, by the way, did not do me any good as what little good it did do has been undone the past couple of months, as I had no sooner returned than it was necessary to go to Cleveland. These weekly letters were begun after I went to California

to keep me advised of mine conditions and Dynan had instructions to send you copies. Since I have been back on the job they have, it is true, been interrupted but through no instructions or desire of mine. I won't propose to do any explaining except that the matter has simply been overlooked.

As far as ore in sight is concerned, I will have Dynan make the statement and send it to you immediately although there has been no material change since the last report was sent you.

I might say for your information that Helen was ill when I left for Cleveland, and that was one of the reasons I did not want to go. She kept going until the day after Christmas when she had to go to bed. On January 18 I took her to the hospital in Reno, as I wrote you before; and as I also wrote you before, she had to undergo a very serious abdominal operation.

As you seem to be suspicious of everything I do, I have no hesitancy in giving you all of the details. From a former appendicitis operation she had one of the worst cases of adhesions [351] the surgeon had seen in some twenty years practice. Due to this and a condition of anemia, both ovaries had become infected and had to be removed. She now has a condition of flobitis and is still in the hospital. She has had a second blood transfusion and is facing a third. She had three special nurses for two weeks which has now been reduced to two special nurses. I am giving you all this not to do "some explaining" but in the hope that you may

gain some conception of what I have been up against the past six weeks.

In all of my business experience it has never been implied that I would do anything underhanded or would conceal any information of any kind or nature, and have never done so in any of our business relations.

I have heard practically nothing from you since I saw you in Cleveland. I did get a telegram from you on Christmas stating that you wanted to be in a trading position and would consider an offer for your interest. Since that time I have naturally been not myself on account of the recital above. In addition, we have had several snow storms and I have had Dynan practically all of the time making transit surveys of the underground workings and doing things I could ordinarily do myself if conditions had been different.

As I wrote you, I have a couple of men in mind who may be interested in taking over your interest, but I want to get the mine in proper shape before examination is made. I have no purpose in telling you this except that it happens to be the truth. While I wouldn't offend you by putting myself in the same class as Mr. McDaniel; after all of my association with the mine and his not having seen it for some nine months, I think that this is the proper thing to do. There are times when a mine is in shape for an examination and there are times when it is not. I am doing everything possible to get things in shape so that the [352] thing will be worked out in a satisfactory manner.

I will have Dynan resume his weekly letters to you, and of course will send you estimates of ore reserve just as often as you want them.

Yours very truly,

L. D. GORDON

LDG :ds

Enclosures [353]

Western Union

Fallon, Nevada

February 11, 1938

R. H. White

Hobe Sound, Florida

Rowson called me regarding your telegram to him. You should have received mill reports covering each cleanup period. Have mailed you complete figures covering all operations for December and January. Mailed you segregated production figures for December. Mailing January figures today. Also mailed you annual audit by Ernst & Ernst. Ore reserves have not changed materially since Dynan's last report but they will be mailed you immediately and will have him resume weekly letters which have been interrupted on account of his work at the mine due to serious illness of Helen. Am writing you fully today.

L. D. GORDON

[Endorsed]: No. A-30-A, U. S. Dist. Court, District of Nevada, Debtor's Exhibit No. 11. Filed June 30th, 1938. O. E. Benham, Clerk. By....., Deputy.

Copy of telegram and letter [354]

DEBTOR'S EXHIBIT NO. 12

The Jupiter Island Club
Hobe Sound, Florida

February 19, 1938

Mr. L. D. Gordon
Fallon, Nevada

Dear Gordon:

Received your letter of February 11th and I am very sorry that Helen has been so desperately ill. I had no knowledge of this fact until a recent telegram from Rowson and your recent letters. In regard to my not receiving certain reports, it was a period of eight or nine weeks, with no explanation of why they were not forthcoming until I raised a row on the subject. After all, the mine is doubly manned both as to management and engineering, and I would suggest that you keep me in a little better touch with conditions.

I take it from your letters that the mine is not as saleable at the present moment as it was when you were in Cleveland the first part of December. I wish you would write me more in detail of your plans in regard to the sale, and who the parties are you expect to interest. It would seem to me that it would be more difficult to get a purchaser for my interest than it would to make an outright sale of the mine, and I do not feel under any obligation to sell out except at what I consider a fair price when an offer is made. I have reached the conclusion that it is up to me to look out for myself in this venture.

I would also like an idea how long it will take to finish the shaft and afterwards how long it will take to run the drifts on the 500' level and do the necessary development work to put the mine into shape for a sale.

Do you expect to try again for the Victor vein on the 500' level? And how long will that take in addition to the above?

In regard to the map of the workings, I wish you'd send me two [355] up-to-date ones with as much detail as possible in regard to *stokes*, etc., and have Dynan send me sketches each week with his letter so that I can paste them on the map.

Please give Helen my best regards and hope for a speedy recovery.

Yours very truly,

/s/ ROLLIN H. WHITE

R. H. White

[Endorsed]: No. A-30-A, U. S. Dist. Court, District of Nevada, Debtor's Exhibit No. 12. Filed June 30th, 1938. O. E. Benham, Clerk. By....., Deputy. [356]

DEBTOR'S EXHIBIT NO. 13

March 3, 1938

Mr. R. H. White
Hobe Sound, Florida

Dear White:

I have your letter of February 19 and am glad to hear from you again.

I regret you feel that I was neglecting you in not forwarding the reports as regularly as I should have, but the facts are that I have been very much upset about Helen and have been giving the mine a lot of thought and attention. However, you may expect to receive them regularly from now on. McLaughlin has been ill again, Dynan has been devoting all of his time in catching up the underground surveys, and the top casting of the Fairbanks Morse engine at the pump developed what appears to be a structural weakness and went out of commission. I borrowed, or rather rented, a caterpillar engine in Reno, got it to the mine and in operation so that the mill only lost a few hours from the water shortage. The new part has been received from the factory and the engine is again in operation.

I expect to get some adjustment in this matter as certainly it was not through any fault of ours that the engine breakdown occurred. An examination of the damaged head shows that the casing is very thin and I imagine the Fairbanks Morse Company also found this out as the new head received for the engine is of much more rugged construction.

I want to impress upon you that there is no desire upon my part to do anything but give you full and complete information on mine conditions, and I think you will agree with me that there could be no possible reason for me to do otherwise. It has simply been an unfortunate two months, and I will endeavor to have every bit of information you want sent you promptly. Dynan is forward-

ing his letter today; the tracing of the mine workings has been sent [357] to San Francisco and prints will be made from this. As soon as they are received here one of them will be sent you.

As to the part of your letter wherein you say that the mine is not as saleable as it was when I was in Cleveland;—if you will recall, I stated when there that the mine was not in proper shape at that time, nor is it in proper shape at this time. I had only returned from California, where I went not at my suggestion but at your insistence. I had received no notice whatever of the plan you had devised to sell the mine until I reached Cleveland, and I did not know that McDaniel had been in New York, without any notice to me, endeavoring to peddle the mine until I found it out accidentally on my way west. However, I do not care to dwell upon that; but as I was not taken into your confidence, I had no advance notice of what your intentions were and was given no opportunity to shape the work accordingly.

The shaft is now practically to the 500 Foot Level. It is my firm conviction that the best of the mine is below us. This is not based upon any wild theory or hunch. The situation is this: In most Nevada mines there has been a tremendous amount of erosion over a period of millions of years and a lot of what might have been in the ground as ore deposits has been eroded during this period. This is especially true of Round Mountain, Manhattan, Rawhide, Rhyolite, and similar camps. However,

in some instances this has not been the case, and it certainly has not been the case at Penelas for the reason that the ore bodies do not come to the surface. The Penelas vein did not come within fifty feet of the surface, and this also applies to the Victor ore body. A similar condition existed in certain Nevada camps such as Tonopah, Goldfield, and Virginia City. I am not saying for a moment that Penelas will duplicate the performance of these last named camps, but I am saying that the geology is almost identical and that there has not been a chance for several hundred feet of the ore bodies to [358] be eroded as they did not reach the surface at any time.

The vein on the 400 Foot Level is wider and stronger than on any of the upper levels. As a matter of fact, this level will be the most reproductive to date, and I feel very sure that the next two or three levels will be a lot better. As before noted, this is not based upon imagination or theory but upon developments to date booked in addition by sound geological reasons.

Dynan speaks of certain work I am doing in a zone cut in the 300 east crosscut. We are drifting north from this crosscut on a well defined structure. The values since we started have been erratic, but recently there has been quite an improvement in the looks of the vein we are drifting on. We now have about two and one-half feet of material carrying values of around \$6.00 a ton. The vein has been gradually improving in appearance and values the

past few rounds. I think it reasonable to expect an ore body in this country.

I have not given up hope of finding the downward extension of the Victor ore body but can give no positive assurance as to this. Some more work should be done on the 300 Foot Level, which I am now doing, and I also want to do a little more on the 400 Foot Level. I feel that if results on these two levels are negative it would be rather a long shot to do much on the 500 looking for a downward extension of this ore body. Answering your question, any work done on the 500 Level toward opening the Victor Vein should depend entirely upon results on the 300 and 400 Levels.

As to my plans, I do not agree with you that it would be easier to sell the whole mine that it would be for you to dispose of your interest. This for the reason that I am supposed to be quite familiar with the Penelas type of mine as I have done as much as anybody in the West with this particular type of ore deposits and my wanting to sell out would be considered a decided *weakness*. [359]

From all of your statements to me, you are willing to consider an offer for your interest. In fact, in Cleveland you proposed to me that my ex-brother-in-law take over your interest. You also wired me Christmas that you would consider an offer for your interest, and would consider an offer of my interest, etc.

My plan therefore is that as soon as I can get the mine in shape where I think it will justify a

proper price is to make an offer for your interest which, of course, you may accept or not. I have no desire to in any way take advantage of my position or what was once your confidence to coerce you into anything. I think the above is fair and reasonable. If you do not accept such an offer, and we can not agree on any compromise basis I will try and dispose of the mine as a whole.

I regret very much your statement that you have reached the conclusion that it is up to you to look out for yourself. I do not think, upon reflection, you really meant that as I certainly do not know of anything I have ever done or said to cause you to reach this conclusion unless it might have been not writing as often as I might have since seeing you in Cleveland. However, the same attention has been paid to the mine and everything possible is being done to further its development in a proper way.

You will note the increased tonnage and the milling costs the past two or three months and a lot of work is being done at a proper cost.

I am going to ask you to recede from your present apparent antagonistic attitude and assume an open mind on the situation. I know a lot of stuff McDaniel told you and I have no criticism to offer except that I do not think it was very ethical of him to inject certain things into the situation that he saw fit to inject. I do not care to elaborate on a lot of this stuff at this time I am willing to assume a more open minded attitude and ask that you do the same. [360]

I would say that it will take probably ninety days to put the thing into the shape it should be in before either a sale of your interest or a sale of the mine as a whole should be started.

Getting away from the mine for a moment. We are having the worst floods we have had in the West for years. Coming in from the mine last night, I passed through virtual cloudbursts for several hours. However, even though the roads are impassable, preparation has been made and we are not short of any necessary supplies to keep going.

I appreciate your good wishes regarding Helen. She is home but has not been able to leave her bed. I plan on taking her to Reno next week for another blood transfusion. She joins me in kindest regards to Mrs. White and yourself.

Yours very sincerely,

L. D. GORDON

LDG:ds

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 13. Filed June 30, 1938. O. E. Benham, Clerk. By....., Deputy. [361]

DEBTOR'S EXHIBIT NO. 14

April 4, 1938

Mr. R. H. White
Hobe Sound, Florida

Dear White:

I have been expecting for some time to hear from you, but regardless of this want to give you some

information in addition to the regular reports which I trust you have been receiving. I have made it a point to see that they went forward regularly.

The shaft has reached the 500 Foot Level, and as I predicted conditions there are much better than they have been on any of the upper levels. At least, that is the situation to date from the small amount of work done.

On account of exhausting the ore in the Victor country, the heads for periods during the last couple of months have been low but this condition has now been remedied. On top of the Victor ore body being exhausted, some of the stopes turned temporarily low-grade but these things occur in any operation.

I *have spending* practically all of my time at the mine and am doing everything possible to get things in shape. The mill is doing much better work than it has ever done, and I am doing everything possible to get the cost down. It will take some time to get the drifts on the 500 extended, but when this has been done and a couple of raises driven, the mine should be in shape for an examination. In the meantime it will continue to show a profit, and our financial condition is better than it has been for a long time.

I am very much pleased over the looks of things on the 500 Foot Level. The formation has a much better appearance, the ground is less broken than on the levels above, the vein is better defined, and the values are holding up in good shape in spite of

the fact that we have not reached the point where the best values can be expected. [362]

Although this winter was not as severe as last, it has been very miserable on account of the excessive precipitation. It has been impossible to get over the Buffalo Canyon road for two months and everything has had to go by way of Quartz Mountain and the Golden Eagle road. The whole country out there has been a sea of mud, but at that there has not been any extra expense as there was during the previous winter.

Helen had to spend another twelve days in the hospital and get another blood transfusion. However, she is now home and can hobble around a bit on the cane. I presume before long she will regain some measure of health. Her mother is with her which has enabled me to be away from Fallon most of the time.

Regarding the situation, I am simply asking you to have a little patience as I assure you I am working definitely for the interests of both of us.

Helen joins me in kindest regards to Mrs. White and yourself.

Yours very sincerely,

L. D. GORDON

LGD:ds

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 14. Filed June 30, 1938. O. E. Benham, Clerk. By, Deputy. [363]

DEBTOR'S EXHIBIT NO. 15

April 13, 1938

R. H. White
% Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

Rowson called me on the phone Monday to advise me of certain demands made on your behalf by Mr. Little. I went to Reno and had a conference with him, and regardless of any legal and similar aspects of the case, I am asking you not to take any further action at this time. After all, our association has been of such duration, and on such a friendly basis that I regret very much the fact that you have seen fit to take what is apparently your present attitude.

I want you to accept definitely as a fact that I am not stalling. In all of our association, I doubt if anything has ever happened to cause you to doubt my honesty of purpose, or my desire to do anything except for our mutual interest. I know were you conversant with conditions as they exist, your attitude would be different than your recent actions indicate.

In the first place, it would be very foolish to have anyone look over the situation with the idea in mind of making you an offer for your interest, or for the sale of the property until the property is right for such an examination. I think this can be

accepted as a fact regardless of whether it is a mine or what it is, for the reason that it is impossible to keep such news quiet. If the reaction of the party making the first examination was bad, it would mitigate very seriously against interesting someone else—at least for a considerable period of time.

Another thing which I think is very pertinent, and I think you will agree that it is a fact; and that is, it is bad to give anyone a bad impression of operating conditions. For the past four [364] months it has been impossible to get over the regular road on account of mud, slop, and snow. It has been necessary to travel about forty miles over a country road by way of Quartz Mountain and over the Golden Eagle summit. The country has been a mass of mud and it has been impossible to look over the surface.

As far as your security is concerned, it is better now than it has ever been. We have as much ore in sight as we have had the past few months, and I am endeavoring to increase this: First, by extending the drifts from the shaft on the 500 Foot Level, and Second, by sinking a winze from the 400 Foot Level to the 500 Foot Level, 360 feet north of the shaft. This winze is being sunk for no other purpose except to gain time as it would take a long time to extend the north drift 360 feet. This winze will prove the downward extension of the north ore shoot. It is good ore and is more than paying its way.

Anything we get from the mine a little later will give us more net money than we could have last

January or February as the Company is now in a better financial condition than it has been in a long time. Consequently, it is not necessary for you to take what appears to be coercive measures in order to induce me to proceed as you wish; because, as a matter of fact, I realize definitely what your position is and I want to proceed as nearly as I can along the lines you wish.

However, to be real frank, I want you to know that I would much prefer to have someone take over your notes and your interest for the reason that paying mines are very scarce and it took me over twenty years to find this property. It is well equipped, is a going concern; and, in my opinion, its future is ahead of it, not behind. There is every indication that the best of the mine is yet to be opened.

As to my plans: I have a man in mind who has the money. He has established a residence in Nevada. However, he has been away [365] during the winter season and for that reason it has been impossible to take the matter up with him. He is expected in Reno within the next ten days whereupon I will see what can be done. If no business is done with him, I have one or two others in mind and it will not take long to find out whether or not they are interested.

I have one or two plans in mind: First, a purchase of your interest and notes. Second, possibly, a sale of a third interest which will return you the major portion of your money, and you will be given

a mortgage for the unpaid balance. The sale of one third to be for enough to make the mortgage ample security for any balance you might still have in the property. Failing in this, a sale of the entire property.

As I said to you in my last letter, there was a short period when the heads were very low and the month of March will not show a profit. However, things are satisfactory again and the current month will show a good profit. The cleanup for the first ten days of April was \$5,500.00 and I expect the balance of the month to be in the same ratio.

You may accept as a fact that I am acting in good faith, and I am asking that you have a little patience until I can give you more definite information as to the results I am getting. I will be able to advise you regarding the first prospect within the next couple of weeks.

Without imposing anything personal upon you, I might say the last four months have been very trying. Helen was ill when I left for Cleveland and has been seriously ill ever since. It has been a great source of worry and a great financial burden, and she is far from well now. In addition, I am not at all well myself but regardless of this I am going ahead and propose doing so to the best of my ability.

I expect within the next month to send you a check for your salary account which will again further reduce the obligations of [366] the Company.

I might also say that I have been somewhat hurt at not hearing from you as the last letter you wrote

me was on February 19. However, this latter statement is not by way of criticism as, of course, you have the right to do what ever you care to in matters of that kind.

Helen joins me in kindest personal regards to Mrs. White and yourself.

Yours very truly,
L. D. GORDON

LDG:ds

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Debtor's Exhibit No. 15 Filed June 30, 1938. O. E. Benham, Clerk. By....., Deputy.
[367]

DEBTOR'S EXHIBIT 19.

Penelas Mining Company

Monthly Report

May, 1938

Contents

Income & Expense

Operating Costs, Current Month, Previous Month,
Fiscal Year to Date:

Stopping & Development Operations

Milling & Administrative Costs

Non-operating Charges

Balance Sheet—

Assets



PENELAS MINING COMPANY
 INCOME & EXPENSE—CURRENT MONTH, PREVIOUS MONTH, FISCAL YEAR TO DATE
 (DEC. 1, 1937 TO MAY 31, 1938)

	Current Month, May, 1938	Previous Month, April, 1938	Fiscal Year to Date
Income			
Sale of Bullion.....	\$12,797.57	\$14,650.33	\$87,221.05
Iron & Slag Accumulated.....	—	—	1,676.25
Total Income	\$12,797.57	\$14,650.33	\$88,897.30
Expense—			
Stopping Operations (Schedule attached).....	3,715.94	4,566.99	23,995.39
Milling Operations (Schedule attached).....	3,756.07	3,911.28	22,706.52
Direct Operating Expenses.....	<u>\$ 7,472.01</u>	<u>\$ 8,478.27</u>	<u>\$46,701.91</u>
Gross Operating Profit.....	\$ 5,325.56	\$ 6,172.06	\$42,195.39
Development (Schedule Attached).....	2,254.03	1,669.38	14,427.56
Shaft Extension—400' to 500' level.....	—	—	2,495.46
“ “ —500' to 600' level.....	972.81	203.48	1,176.29
Administrative	2,319.03	2,174.88	13,651.24
Total, Development, Shaft, Admin.....	<u>5,545.87</u>	<u>4,047.74</u>	<u>31,750.55</u>
Profit, before provision for Interest & other Non-operating Charges	\$ 220.31(red)	\$ 2,124.32	\$10,444.84
Non-operating Charges—			
Boarding-house, etc. (Schedule attached).....	39.90	104.58(red)	87.31(red)
Interest	700.00(red)	700.00(red)	4,200.00(red)
Traveling	148.15(red)	23.50(red)	780.87(red)
Total, Non-operating Charges.....	<u>808.25(red)</u>	<u>828.08(red)</u>	<u>5,068.18(red)</u>
Net Profit, after all deductions.....	\$ 1,028.56(red)	\$ 1,296.24	\$ 5,376.66
Surplus Account—			
Surplus, Fiscal Year ending Nov. 30, 1936.....		\$ 4,560.60	
Deficit, “ “ “ Nov. 30, 1937.....		5,765.74	
Surplus, Current Fiscal year (6 months).....		5,376.66	
Surplus, May 31, 1938.....			\$ 4,171.52
Tons of Ore Milled.....	1,438	1,534	9,141
Net Value of Ore, Average per Ton.....	\$ 8.900	\$ 9.550	\$ 9.725
All Costs, Average per Ton.....	\$ 9.615	\$ 8.705	\$ 9.137
Net Profit, Average per Ton.....	\$.715	\$.845	\$.588
Operating Time in Hours—			
Crusher	106	124	716½
Ball Mill	725	709½	4,300¼
Precipitation	731½	699½	4,269
Filter	700½	670¾	4,091¾



PENELAS MINING COMPANY

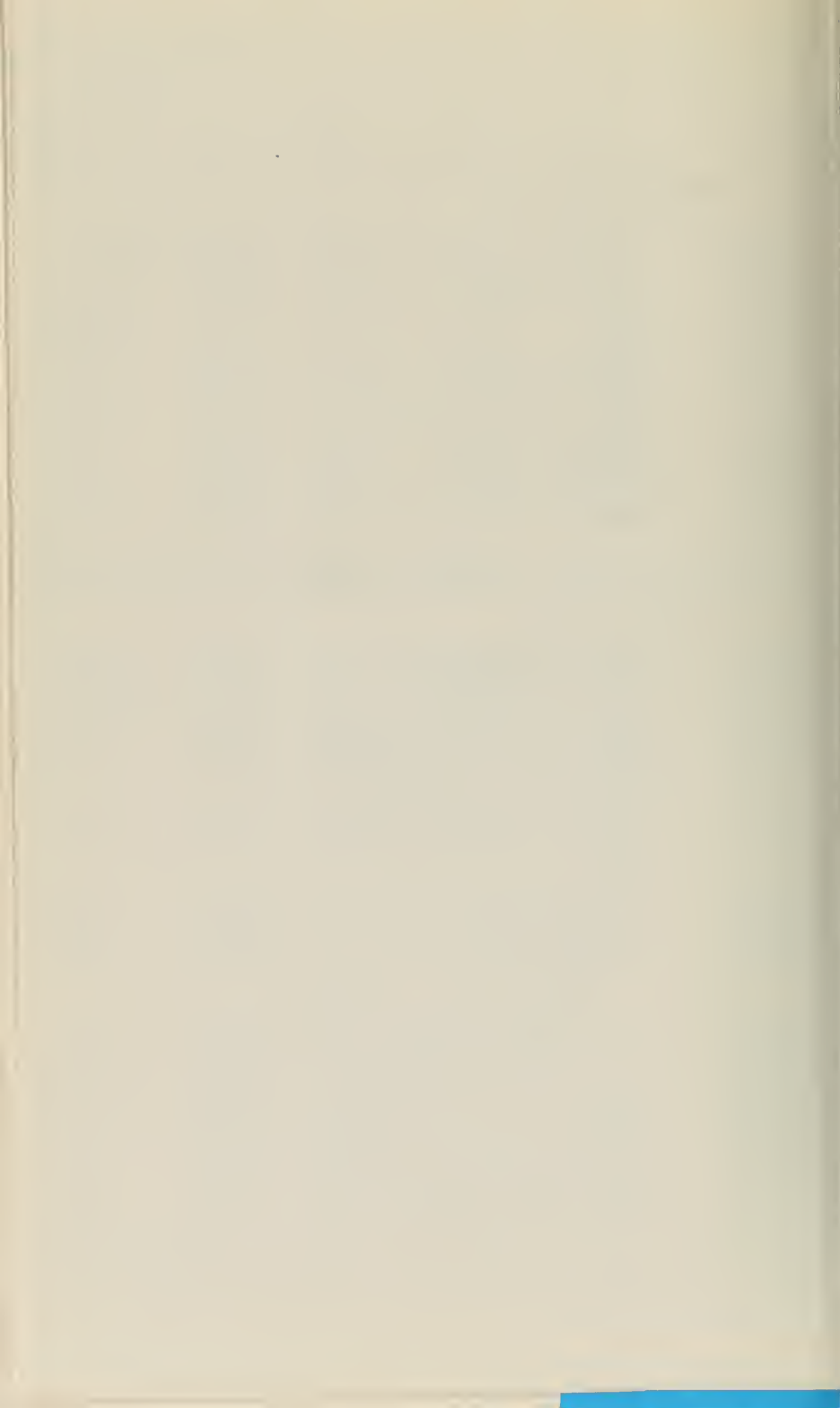
STOPING & DEVELOPMENT OPERATIONS—CURRENT MONTH, PREVIOUS MONTH, FISCAL YEAR TO DATE MAY 31, 1938

	Current Month				Previous Month				Fiscal Year to Date			
	May, 1938		Tons Milled 1,438		April, 1938		Tons Milled, 1534		Tons Milled 9,141			
	Labor	Supplies, Expense	Total	Cost per Ton	Labor	Supplies, Expense	Total	Cost per Ton	Labor	Supplies, Expense	Total	Cost per Ton
Stopping Operations												
Mining.....	\$ 559.95	\$	\$ 559.95	\$.389	\$ 865.63	\$	\$ 865.63	\$.564	\$ 4,388.95		\$ 4,388.95	\$.480
Mucking and Trammig.....	417.64		417.64	.298	644.55		644.55	.420	3,357.39	\$	3,357.39	.367
Timbering.....	394.97	166.99	561.96	.391	573.81	318.30	892.11	.582	2,759.78	1,465.43	4,225.21	.462
Track and Pipe.....	17.32		17.32	.012	23.52		23.52	.015	169.38	35.91	205.29	.022
Engineering and Sampling.....	65.00		65.00	.045	65.00		65.00	.042	400.17		400.17	.044
Superintendence.....	225.00		225.00	.157	225.00		225.00	.147	1,350.00		1,350.00	.148
Hoisting.....	423.37	82.87	506.24	.352	404.23	143.21	547.44	.357	1,991.78	623.65	2,615.43	.286
Blacksmith Shop.....	92.47	12.56	105.03	.073	116.22	27.44	143.66	.094	574.50	104.19	1,678.69	.075
Compressor Operation.....	106.60	211.25	317.85	.221	126.01	161.16	287.17	.187	627.20	911.28	1,538.48	.168
Explosives Consumption.....		332.38	332.38	.231		306.30	306.30	.200		2,261.23	2,261.23	.247
Materials and Supplies.....		64.39	64.39	.045		65.51	65.51	.043		428.29	428.29	.046
Repairs and Maintenance.....	42.00	300.55	342.55	.238	56.10	207.98	264.08	.172	304.53	924.61	1,229.14	.135
Assaying.....	41.36	28.47	69.83	.049	43.00	26.24	69.24	.045	268.41	174.21	442.62	.048
Industrial Insurance.....		130.80	130.80	.091		167.78	167.78	.109		874.50	874.50	.097
Total, Stopping Operations.....	\$2,385.68	\$1,330.26	\$3,715.94	\$2.584	\$3,143.07	\$1,423.92	\$4,566.99	\$2.977	\$16,192.00	\$ 7,803.30	\$23,995.39	\$2.625
Development Operations—												
Mining.....	\$ 325.50	\$	\$ 325.50		\$ 256.62		\$ 256.62		\$ 2,562.05		\$ 2,562.05	
Mucking and Trammig.....	243.19		243.19		191.45		191.45		1,992.00		1,992.00	
Track and Pipe.....	69.30		69.30		94.07		94.07		677.52	143.65	821.17	
Engineering and Sampling.....	260.00	4.68	264.68		260.00		260.00		1,600.71	21.18	1,621.89	
Superintendence.....	225.00		225.00		225.00		225.00		1,350.00		1,350.00	
Hoisting.....	227.97	44.63	272.60		143.52	50.85	194.37		955.19	292.11	1,247.30	
Blacksmith Shop.....	54.32	7.39	61.71		34.53	8.16	42.69		336.60	60.54	397.14	
Compressor Operation.....	62.61	124.08	186.69		37.43	47.88	85.31		374.25	534.49	908.74	
Explosives.....		195.22	195.22			90.98	90.98			1,425.09	1,425.09	
Materials and Supplies.....		37.83	37.83			19.46	19.46			258.27	258.27	
Repairs and Maintenance.....	24.67	176.52	201.19		16.67	61.50	78.17		186.95	526.62	713.57	
Mine Ventilation.....		24.45	24.45			12.18	12.18		19.24	154.51	173.75	
Assaying.....	41.37	28.47	69.84		43.00	26.24	69.24		268.42	174.20	442.62	
Industrial Insurance.....		76.83	76.83			49.84	49.84			513.97	513.97	
Total, Development Operations.....	\$1,533.93	\$ 720.10	\$2,254.03	\$1.568	\$1,302.29	\$ 367.09	\$1,669.38	\$1.089	\$10,322.93	\$ 4,104.63	\$14,427.56	\$1.578
Total, Development and Stopping Operations.....	\$3,919.61	\$2,050.36	\$5,969.97	\$4.152	\$4,445.36	\$1,791.01	\$6,236.37	\$4.066	\$26,515.02	\$11,907.93	\$38,422.95	\$4.203

PENELAS MINING COMPANY
MILLING AND ADMINISTRATIVE COSTS CURRENT MONTH, PREVIOUS MONTH, FISCAL YEAR MAY 31, 1938

	Current Month				Previous Month				Fiscal Year to Date			
	May, 1938		Tons Milled 1,438		April, 1938		Tons Milled 1,534		Tons Milled 9,141			
	Labor	Supplies, Expense	Total	Cost per Ton	Labor	Supplies, Expense	Total	Cost per Ton	Labor	Supplies, Expense	Total	Cost per Ton
Milling Operations—												
Crushing.....	\$ 83.16	\$	\$ 83.16	\$.058	\$ 84.47	\$	\$ 84.47	\$.055	\$ 555.09	\$	\$ 55.09	\$.061
Operating.....	1,066.64		1,066.64	.742	1,048.73		1,048.73	.684	6,211.82		6,211.82	.680
Superintendence.....	250.00		250.00	.174	250.00		250.00	.163	1,500.00		1,500.00	.165
Power.....	52.68	621.28	673.96	.469	67.43	586.20	653.63	.426	367.94	3,639.88	4,007.82	.338
Water.....	177.73	106.24	283.97	.197	205.39	142.87	348.26	.227	1,235.91	715.48	1,951.39	.213
Supplies Consumed.....		813.06	813.06	.565		600.86	600.86	.392		4,825.36	4,825.36	.528
Repairs and Maintenance.....	90.29	167.90	258.19	.180	91.72	279.96	371.68	.242	452.07	807.60	1,259.67	.138
Refining Precipitates.....		34.58	34.58	.024		52.37	52.37	.035		183.54	183.54	.020
Marketing Expense.....		64.05	64.05	.044		275.82	275.82	.180		798.60	798.60	.088
Assaying.....	82.74	56.94	139.68	.097	86.00	52.47	138.47	.090	536.86	348.39	885.25	.096
Industrial Insurance.....		88.78	88.78	.062		86.99	86.99	.056		527.98	527.98	.057
Total, Milling Operations.....	\$1,803.24	\$1,952.83	\$3,756.07	\$2.612	\$1,833.74	\$2,077.54	\$3,911.28	\$2.550	\$10,859.69	\$11,846.83	\$22,706.52	\$2.384
Administrative—												
Mine Office at Penelas.....	60.00	2.75	62.75	.044	60.00	1.05	61.05	.040	360.00	25.63	385.63	.042
Executive Salaries.....	1,050.00	1.35	1,051.35	.731	1,050.00	1.35	1,051.35	.685	6,300.00	8.10	6,308.10	.690
Fallon Office Employees.....	300.00	1.62	301.62	.210	300.00	1.62	301.62	.196	1,800.00	9.72	1,809.72	.198
Postage, Telephone, Telegraph.....		29.19	29.19	.020		36.13	36.13	.024		175.68	175.68	.019
Stationery and Supplies.....		.50	.50	.000		32.18	32.18	.021		139.80	139.80	.015
Office Maintenance, Lights												
Water, Gardener.....		43.09	43.09	.030		13.13	13.13	.009		150.86	150.86	.017
Taxes												
Churchill County.....		5.17	5.17)			5.17	5.17)			31.02	31.02)	
Nye County.....		126.59	126.59)			126.59	126.59)			759.54	759.54)	
Capital Stock.....		58.25	58.25)			58.25	58.25)			349.50	349.50)	
Bullion.....		—	—			—	—			422.53	422.53)	
Payroll Taxes.....				.359				.338				
Federal Old Age.....		71.81	71.81)			76.43	76.43)			464.64	464.64)	.382
Federal Unemployment.....		25.29	25.29)			25.12	25.12)			146.86	146.86)	
State Unemployment.....		227.56	227.56)			226.09	226.09)			1,321.51	1,321.51)	
Insurance.....		101.14	101.14	.070		101.14	101.14	.066		604.48	604.48	.066
Auditing, monthly pro-rata.....		40.63	40.63	.028		40.63	40.63	.026		243.78	243.78	.027
Legal Services.....		154.09	154.09	.107						154.09	154.09	.017
Dues, Mining Association.....		20.00	20.00	.014		20.00	20.00	.013		183.50	183.50	.020
Total, Administrative.....	\$1,410.00	\$ 909.03	\$2,319.03	\$1.613	\$1,410.00	\$ 764.88	\$2,174.88	\$1.418	\$ 8,460.00	\$ 5,191.24	\$13,651.24	\$1.493

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PENELAS MINING COMPANY

Non-Operating Departments

May, 1938

	Current Month. May, 1938	Previous Month. April, 1938	Fiscal Year to Date (6 months)
Income Accounts—			
Store	\$ 36.64	\$ 12.87	\$ 125.94
Boarding House	51.23	87.73	836.51
Residences	188.78	81.86	429.81
Discounts Earned	—	—	1.38
Total Income	<u>\$276.65</u>	<u>\$182.46</u>	<u>\$1,393.64</u>
Expense Accounts—			
Camp Maintenance—			
(Garbage Disposal, etc.).....	48.11	82.14	329.08
Road Maintenance	4.12	16.50	39.18
Trucking and Hauling.....	184.52	188.40	1,112.69
Total Expense	<u>\$236.75</u>	<u>\$287.04</u>	<u>\$1,480.95</u>
Balance	\$ 39.90	\$104.58(red)	\$ 87.31(red)

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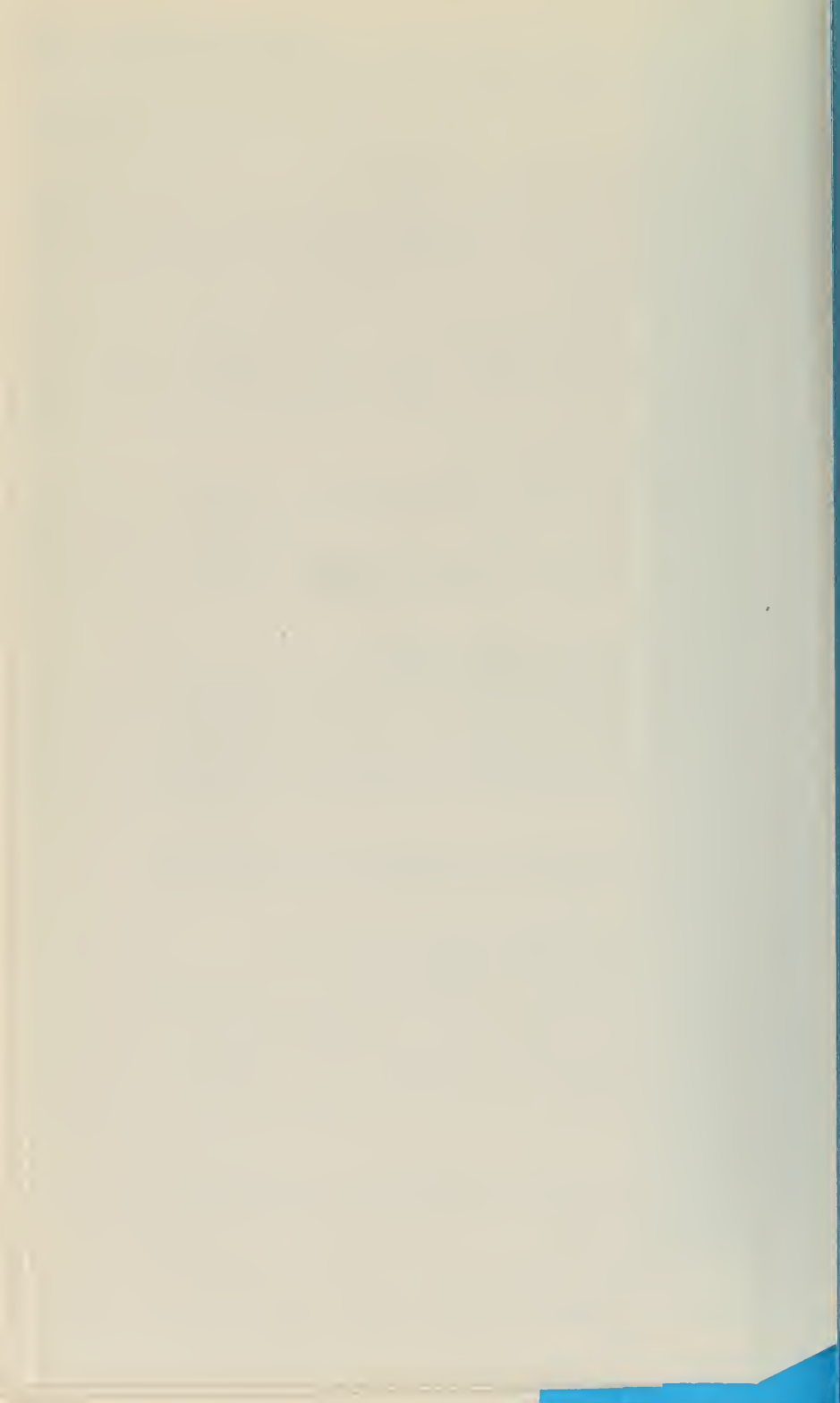
BALANCE SHEET

MAY 31, 1938

Assets

Cash on Hand & on Deposit.....		\$ 8,385.21
Bullion in Transit, net.....		7,664.41
Iron & Slag Accumulated & on Hand.....		547.42
Inventories, Warehouse Supplies, Mill supplies, etc.....		6,513.32
Deposits—		
Nevada Industrial Commission.....	\$ 377.17	
Traveling Fund	375.00	
Braun, Knecht, Heimann Co.—Carboys Deposit.....	25.00	
Kent Company—Barrel Deposit.....	2.00	779.17
Accounts Receivable—		
Nye County—Road Work.....	250.00	
John L. Dynan, Expense Fund.....	14.99	
George Goff	100.00	
Accrued Gasoline Tax Refund.....	94.52	459.51
Mine, Claims & Development—		
Mine, & Mining Claims.....	154,883.51	
Water Rights	86.56	
Shaft (During Development stage of Mine).....	20,321.49	
Drifts & Raises.....	8,999.66	
Development—Combination-Bonanza Tunnel	3,797.47	
	188,088.69	
Allowance for Depletion—to Nov. 30, 1936.....	4,869.39 (red)	183,219.30
Land, Buildings, etc.—		
Real Estate—Fallon Office Site.....		400.00
Buildings & Structures.....	57,081.52	
Machinery, Tools & Equipment.....	91,818.00	
Pipe & Power Lines.....	7,579.48	
Automobiles & Trucks.....	2,336.44	
Roads	414.50	
	159,229.94	
Allowance for Depreciation, 1936, 1937.....	33,434.44 (red)	125,795.50
Deferred Charges—		
Organization Expense	1,077.54	
Prepaid Operating Costs.....	1,637.97	
Prepaid Taxes—Capital Stock.....	58.25	
Prepaid Insurance	456.37	3,230.13
Total Assets		\$336,993.97

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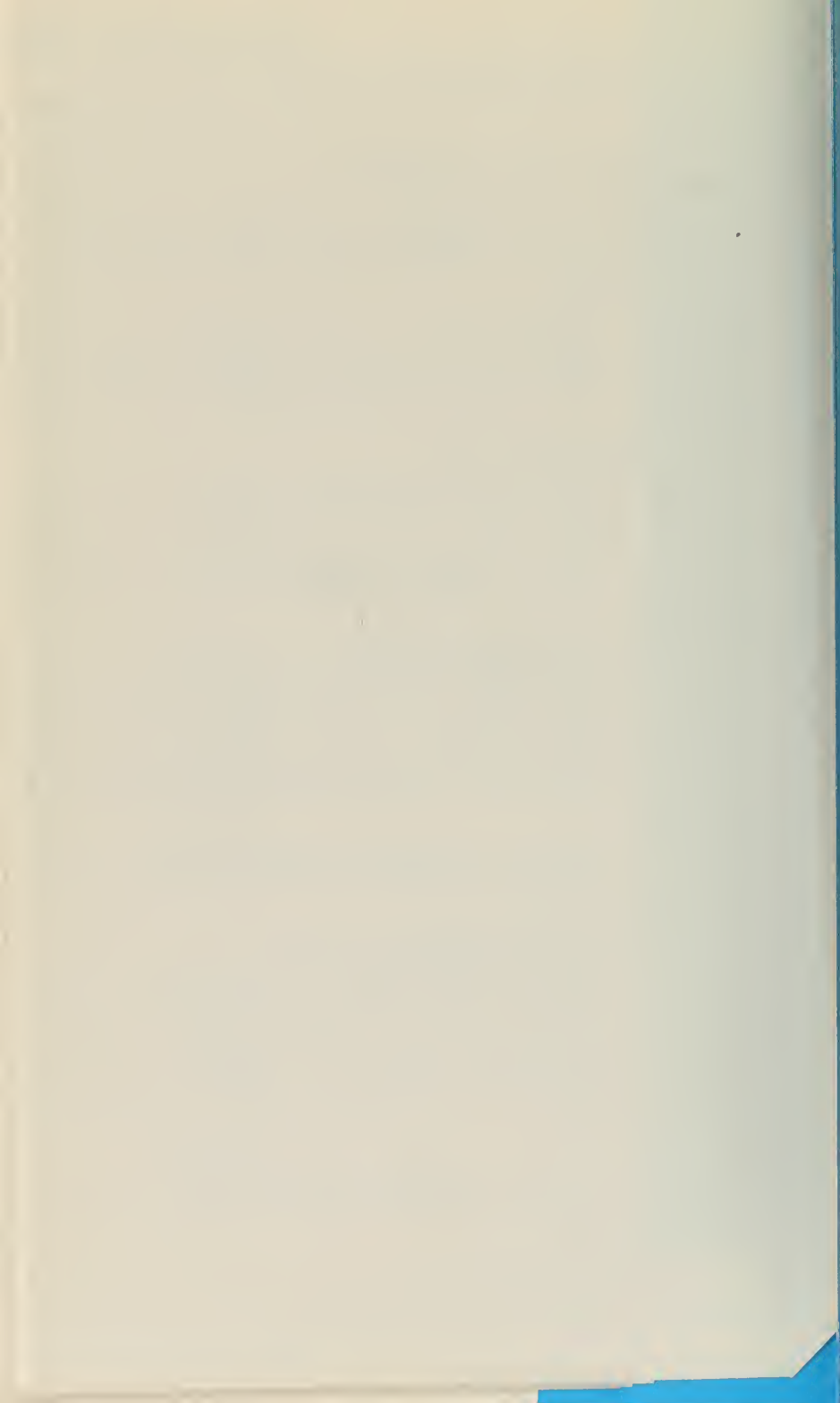
BALANCE SHEET

MAY 31, 1938

Assets

Cash on Hand & on Deposit.....		\$ 8,385.21
Bullion in Transit, net.....		7,664.41
Iron & Slag Accumulated & on Hand.....		547.42
Inventories, Warehouse Supplies, Mill supplies, etc.....		6,513.32
Deposits—		
Nevada Industrial Commission.....	\$ 377.17	
Traveling Fund.....	375.00	
Braun, Knecht, Heimann Co.—Carboys Deposit.....	25.00	
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Accounts Receivable—		
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Mine, & Mining Claims.....	154,883.51	
Water Rights.....	86.56	
Shaft (During Development stage of Mine).....	20,321.49	
Drifts & Raises.....	8,999.66	
Development—Combination-Bonanza Tunnel.....	3,797.47	
	188,088.69	
Allowance for Depletion—to Nov. 30, 1936.....	4,869.39(red)	183,219.30
Land, Buildings, etc.—		
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Buildings & Structures.....	57,081.52	
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Pipe & Power Lines.....	7,579.48	
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Roads.....	414.50	
	159,229.94	
Allowance for Depreciation, 1936, 1937.....	33,434.44(red)	125,795.50
Deferred Charges—		
Organization Expense.....	1,077.54	
Prepaid Operating Costs.....	1,637.97	
Prepaid Taxes—Capital Stock.....	58.25	
Prepaid Insurance.....	456.37	3,230.13
Total Assets.....		\$336,993.97

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PENELAS MINING COMPANY

BALANCE SHEET

MAY 31, 1938

Liabilities

Vouchers Payable—Penelas Accounts—(Schedule attached) (Paid in full 6/13/38).....	\$ 5,344.18	
Vouchers Payable—Wild Rose Mine, Balance (\$500.00 paid June 8th).....	2,239.80	
Accrued Payroll—Payable June 5 & 20—Net.....	4,778.69	
Accrued Payroll Taxes & Industrial Insurance—		
Payroll Taxes—		
Unemployment—Federal—Payable semi-annually	\$130.48	
Unemployment—State—Payable quarterly	453.65	
Old Age—Federal—Payable quarterly.....	296.62	
	<u>880.75</u>	
State Industrial Insurance—payable monthly.....	349.91	1,230.66
	<u>1,230.66</u>	
Accrued Interest on Notes Payable—		
Katharine King White.....	\$10,339.12	
R. H. White.....	10,339.12	20,678.24
	<u>20,678.24</u>	
Accrued Executive Salaries—		
R. H. White.....	6,146.08	
L. D. Gordon.....	127.34	6,273.42
	<u>6,273.42</u>	
Accrued Taxes—		
Property Taxes—Nye County	\$1,392.45	(\$379.75 paid June 8)
Churchill Co.	25.85	1,418.30
	<u>1,418.30</u>	
Bullion Tax—(subject to cancellation).....	152.47	
Federal Capital Stock Tax for current Year.....	698.00	
Poll Taxes deducted from employees for Nye County.....	6.00	(Paid June 13)
Social Security Taxes deducted, pending adjustment.....	2.69	2,277.46
	<u>2,277.46</u>	
Notes Payable to Stockholders—		
Katharine King White.....	70,000.00	
R. H. White.....	70,000.00	140,000.00
	<u>140,000.00</u>	
Capital Stock & Surplus—		
Capital Stock—all issued & outstanding.....	150,000.00	
Surplus—		
Fiscal Year ending Nov. 30, 1936.....	\$4,560.60	
Fiscal Year ending Nov. 30, 1937.....	5,765.74 (red)	
Current Fiscal Year (6 months).....	5,376.66	4,171.52
	<u>15,702.96</u>	154,171.52
		<u>154,171.52</u>
Total Liabilities		\$336,993.97

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PENELAS MINING COMPANY

Vouchers Payable

May 31, 1938

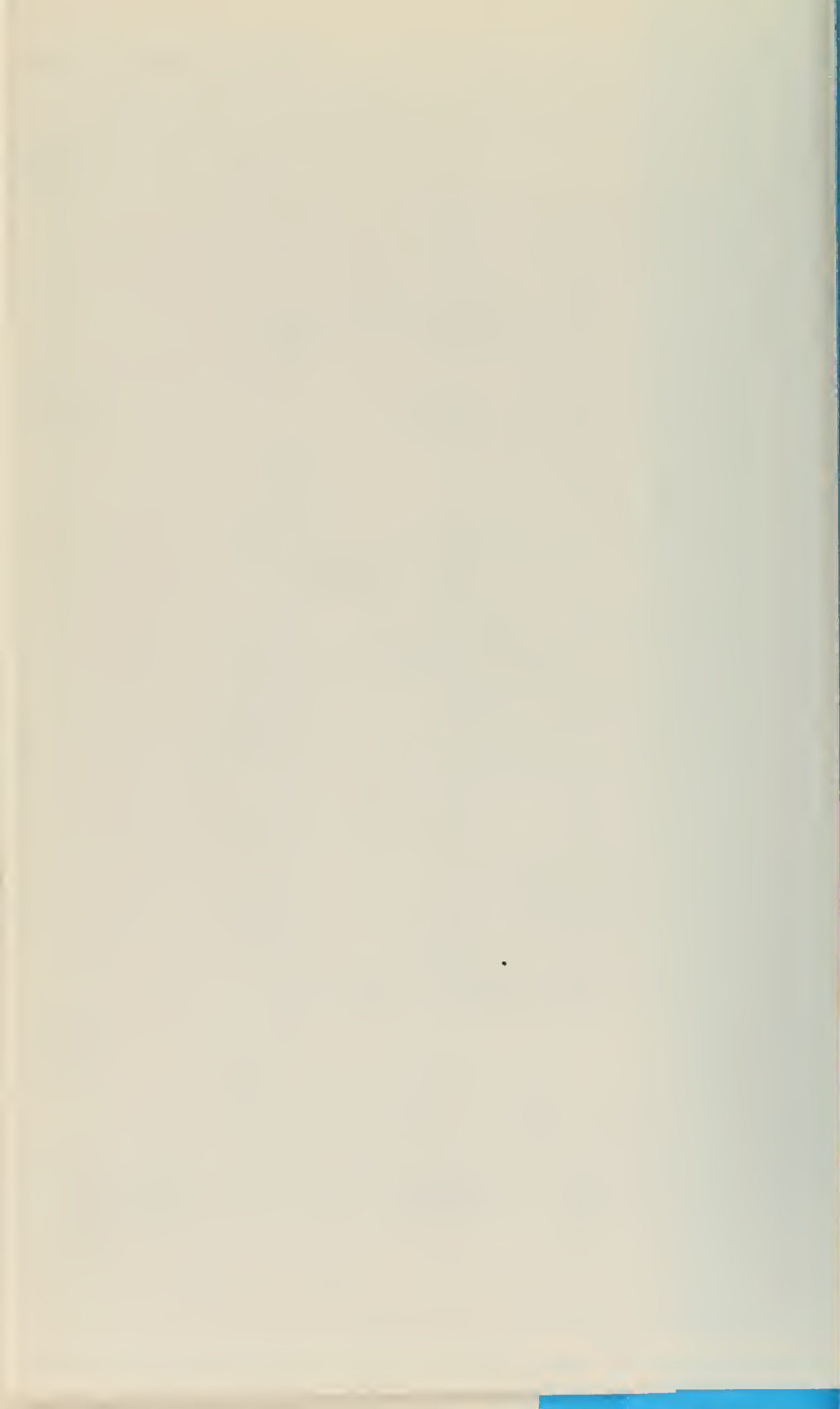
	April, 1938 or prior	May, 1938	Total
American Forge Company.....		\$ 313.76	\$ 313.76
Alloys Company		83.50	83.50
Baker, Hamilton, Pacific Company.....		73.71	73.71
Braun, Knecht, Heimann Company.....		127.54	127.54
Churchill County Telephone Company.....		10.00	10.00
Consumer's Supply Company.....		2.89	2.89
Ernst and Ernst.....	\$ 487.58		487.58
Fairbanks Morse & Company.....	362.55		362.55
City of Fallon.....		5.73	5.73
Fallon Ice Company.....		7.90	7.90
Fallon Garage		24.69	24.69
Fallon Meat Company.....		349.73	349.73
Fourth Street Tool Sharpening Shop.....		11.40	11.40
Furrer and Uster.....		26.02	26.02
Gardner-Denver Company		1.02	1.02
Hercules Equipment and Rubber Company.....		57.57	57.57
Independent Pneumatic Tool Company.....		219.24	219.24
Ingersoll Rand Company.....		113.05	113.05
I. H. Kent Company.....		1,680.53	1,680.53
Lahontan Motor Company.....		74.23	74.23
Linde Air Products Company.....		.66	.66
Mayfield Dairy		42.00	42.00
Merrill Company		59.18	59.18
Soule Steel Company.....		8.91	8.91
Union Oil Company.....		332.71	332.71
Western Machinery Company.....		73.88	73.88
Western Powder Company.....		789.35	789.35
Western Union Telegraph Company.....		4.85	4.85
	\$ 850.13	\$4,494.05	\$5,344.18

(Paid in Full—June 13, 1938)

(Above figures all circled with red pencil mark)

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Debtor's Exhibit No. 19 Filed July 1st, 1938. O. E. Benham, Clerk. By _____, Deputy.

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DEBTOR'S EXHIBIT 20
PENELAS MINING COMPANY

SOURCE OF FUNDS & ASSETS ACQUIRED

JUNE 1, 1934 TO MAY 31, 1938

Source of Funds—			
Investment—L. D. Gordon.....		\$ 24,000.00	
R. H. White.....		24,000.00	
		<hr/>	\$ 48,000.00
Loans from Stockholders—K. K. White.....		70,000.00	
R. H. White.....		70,000.00	140,000.00
		<hr/>	
Profit from Mining Operations—			
Income—			
1936—Precipitates & Bullion.....	135,458.69		
1937—Bullion, Iron & Slag.....	177,752.08		
1938—to May 31—Bullion, Iron, Slag.....	88,897.30		
		<hr/>	
		402,108.07	
Less: Iron & Slag on Hand, May 31, 1938.....	547.42		
		<hr/>	
		401,560.65	
Less: Smelter deductions—All shipments.....	2,324.20		
		<hr/>	
Total Income.....			399,236.45
Expense—			
All operating expense—exclusive of Interest,			
Depreciation & Depletion.....	339,178.92		
Less: Accrued Taxes for 1938—to be billed			
at end of year.....	658.80		
		<hr/>	
Total Expense.....			338,520.12
Operating Profit.....			60,716.33
Total, Funds Provided.....			<hr/> \$248,716.33
Assets Acquired—			
Mine, Claims & Development—			
Mine & Mining Claims—			
Paid by L. D. Gordon.....	1,500.00		
Paid from Loans.....	23,500.00		
		<hr/>	
		25,000.00	
Paid from Company Earnings.....	20,000.00		
		<hr/>	
		45,000.00	
Claims purchased from J. A. McLaughlin.....	250.00		
Claims purchased from H. W. Sawyer.....	601.00		
Legal, Litigation, Recording, Survey, etc.....	7,032.51		
		<hr/>	
Total, Mining Claims.....			52,883.51
Water Rights.....		86.56	
Shaft, during Development stage of mine.....		20,321.49	
Drifts & Raises—			
Total Cost.....	24,691.32		
Expenses Recovered (Ore Shipped—net).....	15,691.66		
		<hr/>	
Book Value.....	8,999.66		
Less: Unpaid portion of interest			
accrued during development stage.....	2,548.64	6,451.02	
		<hr/>	
Development—Combination-Bonanza Tunnel.....		3,797.47	
		<hr/>	
Total, Mine, Claims & Development.....			83,540.05
Land, Buildings, Machinery, Tools, etc.—			
Real Estate—Pallon Office Site.....		400.00	
Buildings & Structures.....		57,081.52	
Machinery, Tools & Equipment.....	91,818.00		
Less: Balance due Western Mach. Co.....	2,239.80		
		<hr/>	
		89,578.20	
Pipe & Power Lines.....		7,579.48	
Automobiles & Trucks.....		2,336.44	
Roads.....		414.50	
		<hr/>	
Total, Buildings, Machinery, Tools, etc.....			157,390.14
Inventories, Supplies on Hand.....			6,513.32
Total, Assets Acquired.....			<hr/> 247,443.51
Balance.....			<hr/> \$ 1,272.82

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Reconciliation of Balance

Assets—

Cash on Hand & on Deposit.....	\$ 8,385.21
Bullion in Transit.....	7,664.41
Deposits	779.17
Accounts Receivable	459.51
Unexpired portion of Paid costs, Insurance, etc.....	3,230.13

\$20,518.43

Current Liabilities—

Vouchers Payable	5,344.18
Accrued Payroll	4,778.69
Payroll Taxes & Industrial Insurance.....	1,230.66
Executive Salaries	6,273.42
Taxes—property, capital stock, poll, etc.....	1,618.66

19,245.61

Balance.....

\$ 1,272.82

Source of Funds—Percentages

Investment	\$ 48,000.00	—	19.3%
Loans from Stockholders.....	140,000.00	—	56.3%
Profit from Operations.....	60,716.33	—	24.4%
Total.....	\$248,716.33	—	100.0%

Reconciliation of Surplus Account (Operating Profit) as shown on Statement and as shown in books—

Book Surplus

4,171.52

Add:

Interest

Less: amount accrued during development.....

20,678.24

2,548.64

18,129.60

Depreciation

33,434.44

Depletion

4,869.39

Unassessed Taxes

658.80

57,092.23

61,263.75

Deduct: Iron & Slag on Hand, May 31, 1938.....

547.42

\$60,716.33

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PENELAS MINING COMPANY

INCOME AND EXPENSE SINCE INITIAL OPERATION OF MILL—FEBRUARY 1, 1936 TO MAY 31, 1938

	Amount	Per Ton
Income—		
Precipitate Shipments	\$ 20,738.61	
Bullion Shipments	370,858.03	
Iron & Slag Accumulated.....	10,511.43	
On Hand, May 31, 1938.....	547.42	
Iron & Slag Shipments.....	9,964.01	
	\$401,560.65	\$10.779
Less: Smelter Deductions—all shipments.....	2,324.20	.062
Total Income	\$399,236.45	\$10.717
Expense—		
Stopping & Development Operations.....	155,603.21 (Note: A)	\$4.177 (A)
Milling Operations	106,196.62 (Note: B)	2.850
Direct Operating Expense.....	261,799.83	7.027
Gross Operating Profit.....	\$137,436.62	3.690
Other Expense—		
Shaft	5,329.57	.143
Administrative	58,848.43	
Less: Unassessed Taxes.....	658.80	
	58,189.63 (Note: C)	1.562 (Note: C)
	63,519.00	1.705
Profit before provision for non-operating charges.....	73,917.62	1.985
Non-operating Charges—		
Boarding house, Trucking, Traveling, etc.....	13,201.29	.356
Net Profit before Provision for Interest,		
Depreciation, Depletion	\$ 60,716.33	\$ 1.629
Interest	18,129.60	.486
Net Profit before Provision for Depreciation & Depletion	\$ 42,586.73	\$ 1.143
(Note: A) Since December 1, 1937, when Stopping & Development operations have been segregated, Stopping has amounted to 62.4% and Development 37.6% of the combined total. This ratio applied to operations for the entire period from February 1, 1936 (—date of start of mill) to May 31, 1938 results in the following:		
Stopping Operations Cost.....	\$ 97,096.40	Cost per ton \$2.606
Development Operations “	58,506.81	“ “ “ 1.571
Total.....	\$155,603.21	\$4.177
(Note: B) During the first two and one-half months, the mill was operated with 2,808 tons of low grade ore from the mine dump.		
Ore milled from mine dump.....	2,808 tons	
Ore milled from mine.....	34,444 tons	
Total.....	37,252	
(Note: C) Schedule of Administrative Costs		
	Amount	Cost Per Ton
Executive Salaries, including Industrial Insurance.....	\$29,424.05	\$.789
Office Employees “ “	10,068.28	.270
Office Maintenance—Lights, Water, Gardener, etc.....	1,050.03	.028
Postage, Telephone, Telegraph.....	995.50	.026
Stationery & Supplies.....	798.26	.021
Insurance	2,262.44	.061
Legal Services	353.59	.010
Auditing (During Operating Period only).....	927.48	.026
Miscellaneous (Mining Association Dues, etc.).....	384.39	.010
Taxes—		
Property	2,400.23	
Less: Unassessed Taxes.....	658.80	1,741.43
Income—Federal (1936)	669.54	
Capital Stock	2,043.75	
Bullion	2,511.32	
Payroll Taxes—		
Federal Old Age.....	1,311.78	
Federal Unemployment	608.91	
State Unemployment	3,038.88	4,959.57
Total, Taxes	11,925.61	.321
Total, Administrative Costs.....	\$58,189.63	\$1.562

Schedule of Land, Buildings, Machinery, Tools, etc.—
(Exclusive of Mining Claims and development work)

Real estate—Fallon Office Site		\$ 400.00
Buildings & Structures—		
Mill Building	\$ 17,184.36	
Crude Ore Bin & Head Fraue	4,523.86	
Refinery Building	510.08	
Crusher Building	620.86	
Power Plant Building	1,016.77	
Hoist & Compressor Building	1,936.22	
Blacksmith Shop Building	305.60	
Machine Shop Building	299.67	
Assay Office Building	1,186.16	
Warehouse Buildings (Main Warehouse, Powder Magazine, Mill Warehouse, etc.)	1,510.34	
Pump House Building	299.96	
Penelas (Mine) Office Building	1,668.45	
Fallon Office Building	2,437.17	
Change Room	777.14	
Boarding house Building & Cook's residence	2,355.98	
Electric Shop Building	434.59	
Carpenter Shop Building	213.36	
Blower Engine Building	53.84	
Residences	19,747.11	
Total, Buildings & Structures		57,081.52
Machinery, Tools & Equipment—		
Mining Machinery, Ore Cars & Buckets	5,490.43	
Mill Machinery & Equipment	34,389.63	
Refinery Equipment	612.45	
Power Plant Machinery & Equipment	13,689.22	
Blacksmith Shop Equipment	480.63	
Machine Shop Equipment	840.28	
Hoisting Equipment	5,394.96	
Ventilating Equipment	685.70	
Track & Pipe in Mine	4,084.85	
Compressor Equipment	12,397.14	
Less: Unpaid Balance— Western Machinery Co.	2,239.80	10,157.34
Assay Office Equipment		1,432.47
Engineering Office Equipment		259.51
Penelas (Mine) Office Equipment		273.16
Hospital (First-aid) Equipment		104.58
Carpenter Shop Tools		37.53
Boarding-house Equipment		524.97
Fallon Office Equipment		649.25
Electric Shop Tools & Equipment		68.73
Pumping Plant Equipment		6,776.71
Telephone Lines & Equipment		88.44
Furniture & Equipment in Residences		2,230.18
Machinery in Storage (Not in use at present)		1,307.18
Total, Machinery, Tools, Equipment		89,578.20
Pipe & Power Lines—		
Pipe Lines & Outlets	3,611.91	
Storage Tanks	889.76	
Well Sinking	127.90	
Power Lines	2,949.91	
Total, Pipe & Power Lines		7,579.48
Transportation Equipment—		
Chevrolet Sedan		1,046.45
Chevrolet Truck #1	1,118.50	
Chevrolet Truck #2	171.49	
Total, Transportation Equipment		2,336.44
Roads		414.50
Total, Land, Buildings, Machinery, Tools, etc.		\$157,390.14
		[379]
Schedule of Inventories, Supplies on Hand		
Warehouse—Inventory (Timber, Carbide, Pipe Fittings, Nuts, Bolts, etc.)	\$ 1,932.41	
Mill Supplies Inventory	1,633.50	
Diesel Oil Inventory	543.95	
Gasoline & Lubricating Oil	1,385.51	
Explosives—Powder, Caps, Fuse	610.89	
Boarding house Supplies—Groceries, etc.	407.06	
Total, Inventories, Supplies, on Hand		\$ 6,513.32
Schedule of Current Assets—		
Cash on Hand & on Deposit	8,385.21	
Bullion in Transit	7,664.41	
Deposits—		
Nevada Industrial Commission	377.17	
Traveling Fund	375.00	
Braun, Knecht, Heimann Co. Acid Carboys Deposit	25.00	
Kent Company—Oil Barrels	2.00	779.17
Accounts Receivable—		
Nye County—Road Work	250.00	
J. L. Dynan, Expense Fund	14.99	
George Goff	100.00	
Accrued Gasoline Tax Refund	94.52	
Unexpired Portion of Paid Costs, Insurance, etc.	459.51	
	3,230.13	
Total, Current Assets		\$20,518.43

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada Debtor's Exhibit No. 20 Filed July 1st, 1938. O. E. Benham, Clerk. By _____, Deputy.



DEBTOR'S EXHIBIT 21

PENELAS MINING COMPANY

Post Office Box 151

Fallon, Nevada

Payments made to Estate of Silverino Penelas on purchase price, lease and option, Leader Group of mining claims

Date of Payments	Derivation of Funds		Royalty Payments from Company Earnings
	L. D. Gordon	R. H. White	
Prior to June,			
1934	\$1,500.00		
1934			
June 1		\$ 3,500.00	
1935			
January 1		5,000.00	
August 2		5,000.00	
November 23		5,000.00	
1936			
March 30		5,000.00	
May 29			\$ 496.32
June 12			604.50
June 20			636.25
July 17			1,234.70
25			2,028.23
September 24			1,596.18
October 24			1,654.27
November 25			1,965.80
December 22			1,620.33
1937			
January 22			1,702.90
February 27			1,341.86
March 24			1,003.24
April 26			1,097.16

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Date of Payments	Derivation of Funds		Royalty Payments
	L. D. Gordon	R. H. White	from Company Earnings
May 17			906.69
June 20			950.78
July 15			1,160.79
	\$1,500.00	\$23,500.00	\$20,000.00
Advanced by R. H. White.....			\$23,500.00
Advanced by L. D. Gordon.....	\$ 1,500.00		
Paid by Company.....		\$20,000.00	\$21,500.00
Purchase Price			\$45,000.00

[Endorsed]: No. A-30-A U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 21. Filed July 1st, 1938. O. E. Benham, Clerk. By, Deputy. [382]

DEBTOR'S EXHIBIT 22

ASSAY CERTIFICATE

Reno, Nevada, June 28th, 1938

L. D. Jordan

Assayers-Engineers

11½ North Virginia Street

Reno, Nevada

The Samples Assayed for E. J. Schrader

Reed 6/28/38 and described as follows, gave the following results, per *ten* of 2000 lbs.

Office No.	Description	Oz. per Ton		Value per Ton		Total Value per Ton
		Gold	Silver	Gold	Silver	
14589	601	0.46	5.14	\$16.10	\$3.29	\$19.39
590	602	0.72	2.68	25.20	1.71	26.91
591	603	0.18	2.18	6.30	1.41	7.71
592	604	0.96	2.64	33.60	1.69	35.29
593	605	0.30	1.90	10.50	1.22	11.72
594	606	0.50	2.96	17.50	1.89	19.39
595	607	1.40	4.04	49.00	2.58	51.58
596	608	0.68	2.22	23.80	1.42	25.22
597	609	0.60	2.30	21.00	1.47	22.47
598	610	0.50	2.10	17.50	1.34	18.84

/s/ F. M. EATON

Gold \$35.00 per oz.

Silver 64¢ per oz.

(Notation in pencil on above form)

Weighted Average \$24.45. Av. width 4.28 ft.

(Schedule of Rates listed on back of this form omitted)

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 22. Filed July 1st, 1938. O. E. Benham, Clerk. By....., Deputy. [383]

DEBTOR'S EXHIBIT 23

ASSAY CERTIFICATE

Reno, Nevada, July 5th, 1938

L. D. Jordan

Assayers-Engineers

1½ North Virginia Street

Reno, Nevada

The Samples Assayed for E. J. Schrader Recd

7/5/38 and described as follows, gave the following results, per ton of 2000 Lbs.

Office No.	Description	Oz. per Ton	
		Gold	Silver
14667	(To XC 82 ft.) 611 (4.2 ft. N face 6th level)	0.32	1.92
668	To XC 61 ft.) 612 (5.3 ft. S end ore Shoot 6th level.....	0.04	3.10
669	613 (5th level muck pile 10 ft.)	0.28	2.66
670	614 (5th level muck pile 5 ft.)	0.14	3.12
671	615 (grab slump ore on the surface 1 mile north of main workings)	0.01	0.31

Value per Ton		Total Value Per Ton
Gold	Silver	
\$11.20	\$1.23	\$12.43
1.40	1.98	3.38
9.80	1.70	11.50
4.90	2.06	6.96
0.35	0.20	0.55

/s/ F. M. EATON

Gold \$35.00 per oz.

Silver 64¢ per oz.

(Explanatory remarks in parenthesis made in pencil by E. J. Schrader). [384]

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 23. Filed July 6th, 1938. O. E. Benham, Clerk. By....., Deputy.

DEBTOR'S EXHIBIT 24

PENELAS MINING COMPANY

Income & Estimated Expense June, 1938

Income—

Receipts from Smelter for
bullion produced, June 1 to
June 20 1938.....\$14,763.37

Bullion produced, June 21 to
June 30 (inc)..... 7,204.53

(Per ton

Total Income\$21,967.90 (\$15.780)

Expense—(Estimated) 12,345.82 8.868

Estimated Profit\$ 9,622.08

Tons of Ore Milled—1,392

Estimated Profit per ton—\$6.912

Basis for Estimated Expense, Month of June, 1938—

Actual Expense—Current Fiscal Year, December 1, 1937 to
May 31, 1938—

Stoping Operations\$23,995.39

Milling Operations 22,706.52

Development Operations 14,427.56

Administrative 13,651.75

Shaft Extension 3,671.75

Non-operating Departments 868.18

Interest 4,200.00

Total Expense, Six Months.....\$83,520.64

Average per month..... \$13,920.10

Expenses Reduced in June—

Payroll, December 1, 1937 to May 31 1938	
(Six months period).....	\$45,370.84
Average per month.....	7,561.81
June, 1938 Payroll.....	6,237.53
	<hr/>
June Payroll Reduction.....	1,324.28
Fuel, anti-freeze, etc. not used during June (est).....	250.00
	<hr/>

	[385]
Total Estimated Reduction in Expenses, June	\$1,574.28
	<hr/>
Total Expense—June, 1938.....	\$12,345.82

[Endorsed]: No. A-30-A. U. S. Dist. Court,
District of Nevada. Debtor's Exhibit No. 24. Filed
July 6th, 1938. O. E. Benham, Clerk. By.....,
Deputy. [386]

DEBTOR'S EXHIBIT 25

Rollin H. White
19300 Euclid Avenue
Cleveland

December 13, 1937

Mr. Walter Rowson,
223 E. C. Lyon Building,
Reno, Nevada.

Dear Mr. Rowson:

I am enclosing copies of two recent letters to Gordon. I have gone conservative as have a great many other people here in the East who are trying to hold on to what they have and not take the risk

of profit with a gamble. There are so many reasons for this on account of the New Deal which you probably have in mind better than I could express them.

Louis is very much disappointed as he has an equal gamble on this mine without holding the bag. As you heard the conversation in your office, you know that Louis' thought was that he could do the trick and put the mine on a paying basis for \$65,000. He also estimated that the value of the ore they would mill would equal \$20.00 and that the mill would produce \$100,000 a year in profit. You will appreciate that this picture has not been realized and the present status of the mine is an average of about \$5,000 a month profit in sight, and with my notes and unpaid interest, it would take three or four years to pay off the same.

I wish you would co-operate with Louis and try to advise him in our interest as a sell out at this time is the best way out for me, and he owes it to me on account of the extra money which I have had to advance and still maintain his equity.

If anything comes up which you think affects my interest, I hope you will write me at once.

I wish to extend to you and your family my very best wishes for a Merry Christmas and a Happy New Year. [387]

Very truly yours,

/s/ ROLLIN H. WHITE

RHW-EC [388]

Rollin H. White
19300 Euclid Avenue
Cleveland

December 13, 1937

Mr. Walter Rowson,
223 E. C. Lyon Building,
Reno, Nevada.

Dear Mr. Rowson:

For your information, McDaniel used to be head man for Mr. Bert Holden, who was my sister-in-law's brother. He made a great success in the mining business and is a top-notch mining man. I employed him to go to the mine with me in August as I had formed an opinion before going that it would be a wise thing for me to sell out. McDaniel never mentioned the matter of selling out. It was my initiative—not his.

Louis has made a lot of insinuations in regard to him and has been very much more unfair to McDaniel than McDaniel has been to him. McDaniel has always spoken very highly of Louis and what he has accomplished at the mine. Louis, I think, resents him, which is unfair to both Mr. McDaniel and myself.

I have always treated Louis as a partner and the facts of the matter are that it is a corporation and the President of the company has a perfect right to an investigation which I thought best, all of which has been on my own money, or to sound out people who would be interested in buying the mine.

Please keep these facts in mind if Louis gets to raving. I think you had better keep this part confidential although you can use your own judgment.

Very truly yours,

/s/ ROLLIN H. WHITE

RHW-EC [389]

December 18th, 1937.

R. H. White, Esq.,
19300 Euclid Avenue,
Cleveland, Ohio.

My dear Mr. White:

Re: Penelas Mining Company.

I regret the unavoidable delay in answering your letter of December 13th, 1937.

After carefully reading the copies of correspondence which accompanied your letter, and Mr. Gordon's original letter to you of December 8th, 1937 (which I am returning herewith as requested), there is little that I can say at this particular juncture, except that I shall most certainly cooperate with both of you in whatever efforts may be necessary to bring about an adjustment satisfactory to all concerned.

In the event a buyer is found and the matter of a corporate sale is before the Board for action, my vote will be cast according to my own best judgment and solely with a view to serving the company and all of its stockholders.

While you and Mr. Gordon are in effect the only stockholders having a material interest in the corporate project, and in times past I have served both of you as personal counsel, if we eventually face the question of what is best for Penelas Mining Company I shall be guided only by my duty as a director as I see it, and according to the dictates of my own conscience.

My family join me in reciprocating your Yuletide wishes, and we all hope that the New Year may bring you a full measure of health and happiness.

Sincerely,

WALTER ROWSON

WR'M [390]

The
Jupiter Island
Club
Hobe Sound, Florida

January 8, 1938

Mr. L. B. Gordon
Fallon
Nevada

Dear Gordon:

Since arriving here there has been no stenographer available so I have not written you.

I would like to hear from you how you are getting along on a sellout, and if you are making any headway which would be an advantage to both of us I would be glad to extend the time, but not unlimited.

I would like to have you keep in touch with *Rowlson* on your negotiations and have him concur with any extension of time after the first of February that you think you require.

In regard to my selling out at the price of my investment, I would not care to do so unless I thought it was equal to my equity in the property. My reasons for this I think are sound, and I'd rather discuss them with you personally.

With very best regards to yourself and Helen, I remain

Very sincerely yours,

/s/ ROLLIN H. WHITE

RHW:m [391]

The
Jupiter Island
Club
Hobe Sound, Florida

January 8, 1938

Mr. Walter *Rowlson*
Reno
Nevada

My dear Mr. *Rowlson*:

I am enclosing copy of my letter to Gordon, and the basis for a deal would be dealing with some sound people financially and an initial cash payment of \$200,000 or more.

I hope Louis will keep you advised in regard to his negotiations and that you will help him whenever you can.

With best regards to yourself, I remain

Yours very truly,

/s/ ROLLIN H. WHITE

RHW:M [392]

Western Union

January 11, 1938

Hobe Sound, Florida

L. D. Gordon

Fallon, Nevada

Leaving Saturday for week or ten days fishing trip on Keys. If there is anything you wish to take up with me you had better wire me Thursday.

Best regards,

R. H. WHITE [393]

Western Union

Fb 37 24 NL XC-Hobe Sound Flo 29

1938 Jan 29 PM 6 52

Walter Rowson

Reno Nev

Have Had No Word From Gordon About Mine or Proposed Sale for Three or Four Weeks Would Appreciate Any Information You Have About It.

R. H. WHITE. [394]

Copy of Western Union Telegram

February 11, 1938

R. H. White

Hobe Sound, Florida

Rowson called me regarding your telegram to him. You should have received mill reports covering each cleanup period. Have mailed you complete figures covering all operations for December and January. Mailed you segregated production figures for December. Mailing January figures today. Also mailed you annual audit by Ernst & Ernst. Ore reserves have not changed materially since Dynan's last report but they will be mailed you immediately and will have him resume weekly letters which have been interrupted on account of his work at the mine due to serious illness of Helen. Am writing you fully today.

L. D. GORDON [395]

The Jupiter Island Club

Hobe Sound, Florida

February 19, 1938

Mr. Walter Rowson,

Reno

Nevada

My dear Walter:

I am enclosing Gordon's letter and also my answer to same. I wish to thank you for stirring up Gordon in regard to these reports. The whole mine

is in rather an unsatisfactory condition, and if you have any suggestions to make they would be gladly received by me.

From my standpoint, everything has gone badly since we organized, and I have done more for my 50% equity in financing than Gordon has in making a success of his representations and calculations. It would seem to me that a sale of the whole property would be the best way out, but Gordon doesn't seem to take this view.

With very best regards to yourself and to your family, I remain

Yours very truly,

/s/ ROLLIN H. WHITE [396]

February 25th, 1938

Rollin H. White, Esq.,
c/o The Jupiter Island Club
Hobe Sound, Florida.

My dear Mr. White:

Your letter of February 19th, 1938 has just been delivered to me. I have read the accompanying letter addressed to you by Mr. Gordon of February 11th, 1938, and am returning said letter herewith.

This whole situation impresses me as being extremely unfortunate. Although I am a member of your directorate and have gratuitously served as your company's Secretary since its organization, I

am not exactly on the inside of this mining venture and certainly would not assume to attempt to mediate as between yourself and Mr. Gordon. However, if I may be permitted to offer anything by way of constructive suggestion, it would be my thought—based upon the information furnished you in Mr. Gordon's several recent letters—that this is not a propitious time to dispose either of the mine as a whole, or your interest in the property, and that you would be well advised to maintain the status quo until the company's directors can convene and decide intelligently on the proper course to follow.

As I indicated to you in my initial letter on the subject, my sole interest is in discharging my duty as a director for the best possible interests of the company and its stockholders, and this I shall endeavor to do without partisanship and based solely on what facts and conditions appear to justify when they are all before me.

Reciprocating your regards and with all good wishes, in which the family joins,

I am,

Sincerely, [397]

WALTER ROWSON.

WR'M

Encs. [398]

Hobe Sound, Florida

April 13th 1938

Dear Mr. Rowson:

I enclose a copy of my letter to Gordon.

I am leaving here Friday to tour home. Any letter to me should be *address* to Mr. Sitte who will communicate with me.

Yours truly

ROLLIN H. WHITE [399]

 January 31st, 1938

R. H. White

c/o The Jupiter Island Club,
Hobe Sound, Florida.

Am Informed That Gordon Has Written You Fully on Mine Matters. Have Refrained From Adding to His Worries As Mrs. Gordon Seriously Ill for Past Several Weeks and Had Major Operations Ten Days Ago and Still in Hospital.

WALTER ROWSON [400]

 Western Union

CA 517 64 NL XC-Hobe Sound Flo. 10

1938 Feb. 10 PM 10 48

Walter *Rawson*

Reno Nev.

Have Not Received *Byan* Weekly Reports on Development of Mine nor Monthly Report of Ore Re-

serve for Two Months I Telegraphed Gordon Jan
Twenty Ninth for Ore Reserve Report and I Have
Received No Reply I Wish This Information At
Once and Reinstatements of *Bryan* Reports It Will
Take Some Explaining to Justify the Stopping of
These Reports Sorry to Hear of Helen's Illness.

R. H. WHITE [401]

Western Union

February 11th, 1938

R. H. White
c/o The Jupiter Island Club,
Hobe Sound, Florida

Retel Phoned Fallon. Gordon Wiring You in De-
tail Regarding Reports.

WALTER ROWSON [402]

August 7, 1937

Mr. Rollin H. White,
19300 Euclid Avenue,
Cleveland, Ohio

Dear Mr. White:

Our trip has ended here in Denver rather later
than intended due to the hospitality of our Califor-
nia relatives. It was a very pleasant one and we
travelled in all over 5,000 miles.

Mr. Gordon sent me a copy of his letter to you,
telling of his progress, and I am glad to note that

he is pushing the development of the Victor vein, by driving from the first and third levels to reach it and also that he is getting ready to stop on the second level. As I told you, I think it is quite important to begin production from this vein as soon as possible due to its much higher silver contents. You know that our Washington friend is liable at any time to quit the foolish policy of paying the miner twice the market price for his silver. Of course, no one knows what may happen but there is an occasional item in the newspapers which hints that way. Naturally, then, it is wise to produce that ore as fast as possible and get the higher price for the silver. Should the government decide to quit paying 77¢ for silver, it would knock a hole in the expectation that this vein will repay what you have in the property.

I would think it wise as soon as possible, to run the mill entirely upon this higher silver ore and leave the higher gold ratio ore in the mine. I suppose the second level is ready for stoping by now, or will be very soon now, and based upon their assay values, the mill showing should increase considerably.

I hope the results when the ore shoot is reached on the first and third levels will come up to those on the second level, as we have every right to expect, in which case the bank account should show the effect of the \$25 heads value. [403]

I hope I may be kept advised of the progress at

the mine from time to time and I will be glad to give any suggestions which come to me.

With kind regards, I am

Yours very truly,

(Signed) A. K. McDANIEL [404'

Rollin H. White
19300 Euclid Avenue
Cleveland

December 6, 1937

Mr. L. D. Gordon,
Penelas Mining Company
Fallon, Nevada.

Dear Gordon:

I want all of the reports which have been sent to me in the past two months continued and I have not as yet received them for November. Please have Dynan continue sending me the letters regarding the progress of the mine; also monthly reports of the values of the stoping going into the mill and the stopes from which it comes, and estimated ore in place. I wish you would also have Byron continue to send me monthly reports of the payroll, the same as he furnished me for October, together with the other information which he is sending me.

I am rather expecting to get away the last of this week as I think it is very desirable to get Mrs. White out of the cold weather, but any letters or telegrams will be forwarded to me by Miss Cross

until I give you our permanent address at Hobe Sound.

I do not know what I could add to this situation which would clarify it any to you as I expressed it pretty completely on your visit here last week. I would be very much opposed to dealing with anybody except responsible parties for the sale of this mine and I would like to state once again that I consider the sale is to my best interest.

With kindest regards to yourself and Helen, I remain

Sincerely,

/s/ ROLLIN H. WHITE

RHW-EC [405]

December 16, 1937

Mr. Rollin H. White
c/o Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

Mr. T. G. Anderson of Ernst & Ernst who is now auditing our books has asked me to forward to you these letters I am enclosing. He requests that they be signed by you and Mrs. White and returned to the Ernst & Ernst office in San Francisco.

Yours very sincerely,

L. D. GORDON

LDG :ds

Enclosures. [406]

Copy of Western Union Telegram

March 3, 1938

R. H. White
Hobe Sound, Florida

Airmail letters from Dynan and myself on way today.

L. D. GORDON [407]

December 17, 1937

Mr. Rollin H. White
c/o Cleveland Tractor Company
19300 Euclid Avenue
Cleveland, Ohio

Dear White:

On December 8 I enclosed in an air mail letter a statement of the production broken down as to various levels and prepared by Dynan. You should have received this before now.

I am enclosing herewith a complete statement of all wages and salaries paid for the month of November. I am advised by Byron that the mill data has been sent you every ten days. As explained to you in my other letter, the November statement will be mailed just as soon as possible. The only reason you have not received it sooner is due to the fact that T. G. Anderson, the auditor from San Francisco, is here closing the books for the fiscal year, getting data for the income tax return, and going over other matters.

Dynan will probably mail you today a regime of the work accomplished since his last report, and the only reason he did not send a report the first week in December was the fact he knew I had gone to Cleveland and naturally took for granted that I would give you all new information. In addition he sent me a telegram which was delivered to your office giving me the developments at that time. You should have this wire on file in your office.

Yours very sincerely,

L. D. GORDON

LDG :ds

Enclosure

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 25. Filed July 6th, 1938. O. E. Benham, Clerk. By....., Deputy. [408]

DEBTOR'S EXHIBIT 26

TOLLES, HOGSETT & GINN

1759 Union Trust Building

Cleveland, O.

March 28, 1938

21-S

A-1467

Walter Rowson, Esq.,

319 E. C. Lyon Bldg.,

Reno, Nevada.

Re: Penelas Mining Company

Dear Mr. Rowson:

Mr. White has asked me to write you asking you

to prepare and forward to me a mortgage on the Penelas properties in accordance with the terms of the agreement between Mr. Gordon and Mr. White dated May 1, 1935.

He has asked me also to have the stock certificates issued in Mr. Gordon's name and pledged with Mr. White re-issued in Mr. White's name. Later in the day I will get in touch with the Cleveland bank which is holding this stock and have it forward these certificates to its Reno bank correspondent with instructions to surrender them to you upon receipt of the new certificates. As a matter of form only, demand is made for the payment of the past due notes issued by the company to Mr. White and his family.

I expect Mr. White to return from Florida about April 10 and would like very much to have these matters in shape by the time he arrives in Cleveland, although I realize that that is asking a great deal.

When you see Mr. Gordon I wish you would give him my best regards. I thoroughly enjoyed my visit with you some three years ago.

Very truly yours,

/s/ JOSEPH C. LITTLE

Air Mail [409]

April 1st, 1938

Joseph C. Little, Esq.,
Messrs. Tolles, Hogsett & Ginn,
1759 Union Trust Building,
Cleveland, Ohio.

Dear Mr. Little:

Re: Penelas Mining Company.

I have today received your letter of March 28th, 1938, on the eve of my departure for San Francisco, where I am presently engaged on a number of railroad hearings before the Interstate Commerce Commission.

Although time will not permit careful scrutiny of the agreement executed by Mr. White and Mr. Gordon on May 1st, 1935, it is running in my mind that a corporate mortgage was to be delivered to Mr. White for moneys advanced by him, in the event he was later called upon to liquidate the unpaid balance of the purchase price for the Leader Group acquired by Penelas Mining Company under lease and option. I am under the impression that final payments on that property were made from corporate earnings rather than from personal advances by Mr. White, but it is possible I am mistaken in this.

Promptly following my return from San Francisco during the latter part of next week I shall refresh my memory on these items by reference to the files, and at that time will also give my attention to the requested transfer of Mr. Gordon's stock certificates pledged to Mr. White. I regret that I may not be able to accomplish this by April 10th as you

request, due to the pressure of other matters necessitating my absence from Reno.

I shall convey your personal message to Mr. Gordon when next we meet.

Faithfully,

WR'M [410]

WALTER ROWSON

April 11/38

Penelas Mining Company

(Excerpt from Continental Trust Company's letter to First National Bank on demand for \$102,000.00 past due notes.)

"Kindly do not protest any of the enclosed notes which may be dishonored, but advise us of the time of presentment and of any reason which may be given for their dishonor".

"In the event any of the notes are not paid and transfer of the certificates cannot be made, kindly hold both the notes and the certificates until further instructions from us."

"If so presented for transfer kindly wire us at our expense as to whether or not such transfer is being made". [411]

April 13th, 1938.

Joseph C. Little, Esq.,
Messrs. Tolles, Hogsett & Ginn,
1759 Union Trust Building,
Cleveland, Ohio

Dear Sir:

Captain Rowson was called back to San Francisco

in connection with the railroad hearing upon which he was engaged last week before the Interstate Commerce Commission, and did not have an opportunity before leaving to write you further in connection with your letter to him of March 28th, 1938.

Following Captain Rowson's return to Reno some time next week he will doubtless write you further on the subject matter contained in your letter above referred to.

Yours very truly,
MARGARET HARRINGTON,

MH

Secretary [412]

Tolles, Hogsett & Ginn
1759 Union Trust Building
Cleveland, O.

April 20, 1938

21-S

A-1467

Mr. Walter Rowson,
319 E. C. Lyon Bldg.,
Reno, Nevada.

Re: Penelas Mining Company

Dear Mr. Rowson:

I have received this morning from The Cleveland Trust Company a report from its correspondent, First National Bank of Nevada, at Reno relating to the proposed transfer to Mr. White's name of 37,500 shares of Penelas stock issued to Mr. Gordon

and pledged by him with Mr. White. I have also talked by telephone with Mr. White, who is still in the South but is expected to return the first part of next week.

Mr. White's position is this: He and his family now have a most substantial investment in Penelas, much greater than the \$50,000 originally estimated by Mr. Gordon as the amount required to put the mine in operation. He feels that he must do everything that can be done to protect this investment. As matters now stand, however, Mr. White has no adequate voice in controlling the operations of this property; and if an opportunity came to sell the mine at a figure which Mr. White deemed advantageous, he would be powerless, in the fact of the present stock holdings, to vote through the acceptance of this opportunity and recover his investment. Despite the fact that he has advanced substantially all the capital required in this venture, he, nevertheless, cannot effectively speak either as to immediate operations or final disposition of the corporate assets. So long as both Mr. White and Mr. Gordon live, presumably their common problems can [413] be solved by agreement. In case Mr. Gordon should die, however, Mr. White and his family might well be put in a situation which would be most unsatisfactory.

We feel that this matter must be cleared up now; and that Mr. White should have the voting power in respect to the 37,500 shares issued to Mr. Gordon and pledged to secure payment of the corporate

notes. This was the purpose of my sending the stock certificates to Reno with the request that they be transferred to Mr. White's name, the transferred shares, of course, remaining the property of Mr. Gordon but the voting power going to Mr. White. If Mr. Gordon objects to this transfer, the desired result could probably be accomplished by his giving to Mr. White an irrevocable proxy to vote these shares so long as they remained pledged. I have not, however, checked the Nevada law as to irrevocable proxies but can do so if the suggested procedure appeals to Mr. Gordon.

Failing some arrangement such as this for giving Mr. White voting control in the corporation, it would seem to be necessary for him, in order to protect his investment, to take judgment on the notes and levy execution on the corporate property. Such procedure would be followed only after exhausting every effort to compose this situation by mutual agreement. For the sake of the interests of both Mr. Gordon and Mr. White, I hope you and Mr. Gordon will cooperate with us in finding an amicable solution.

I am sending Mr. Gordon a copy of this letter. If it seems feasible to set forth your reactions in a night letter, please wire me collect after you have discussed this letter with Mr. Gordon.

Very truly yours,

/s/ JOSEPH C. LITTLE

Air Mail

cc Mr. L. D. Gordon

Mr. King White [414]

Western Union

Day Letter April 25, 1938

Joseph C. Little,
Messrs. Tolles, Hogsett & Ginn,
1759 Union Trust Building,
Cleveland, Ohio.

Your letter Twentieth. Gordon anxious afford White all possible protection and agreeable execute irrevocable proxy to be exercised on death of either party. This can be covered by appropriate agreement which I will draft and forward with airmail letter tomorrow.

WALTER ROWSON [415]

April 26th, 1938.

Joseph C. Little, Esq.,
Messrs. Tolles, Hogsett & Ginn,
1759 Union Trust Building,
Cleveland, Ohio.

Re: Penelas Mining Company.

Dear Mr. Little:

I regret that a succession of Interstate Commerce Commission hearings requiring my absence from Reno have unavoidably delayed a complete answer to your letter of March 28th, 1938, to which I partially responded on April 1st, 1938.

Following the arrival of your letter of April 20th, 1938 I wired you yesterday as follows:

“Your letter twentieth. Gordon anxious afford White all possible protection and agreeable execute irrevocable proxy to be exercised on death of either party. This can be covered by appropriate agreement which I will draft and forward with air mail letter tomorrow.”

Mr. Gordon came to Reno yesterday following receipt of his copy of your letter to me of April 20th.

Adverting first to your letter of March 28th, 1938, I intimated in my acknowledgment of that letter that it was my impression that under the agreement of May 1st, 1935 the corporate mortgage was to be executed to Mr. White if he was later required to advance the necessary funds to pay off the balance of the purchase price for the Leader Group. That feature is covered by Paragraph 9 of the agreement, which is to the effect that Mr. White has the right to advance such additional funds as might be required for the purpose of liquidating the balance of the purchase price, and in such event receive a first mortgage for all of the funds advanced by him.

[416]

The fact is, of course, that Mr. White was not required to pay off that balance. The corporate records show that from May 29th, 1936 to July 15th, 1937 a total balance of \$20,000.00 due on the purchase price was paid exclusively from corporate earnings. In that situation I could not comply with your initial request for the execution of a mortgage to Mr. White.

On your requested transfer of the Gordon stock certificates, which was followed by their delivery to the First National Bank here, I necessarily declined transfer after consulting Paragraph 6 of the agreement. In substance, that paragraph provides that stock is to be issued from the treasury for all moneys advanced by Mr. White, at \$1.00 per share, in equal amounts to White and Gordon; that Gordon's stock is to be hypothecated to White as security for repayment of corporate loans, and to be ratably released to Gordon as the corporate loans are repaid, upon the basis of one share of stock for every \$4.00 repaid, until all White's advances have been paid, when the balance of the hypothecated stock is to be released to Gordon.

Although no time limit is mentioned for the redemption of the pledged stock, it is reasonable to assume that the time of redemption is actually limited by the final due date of the corporate notes held by Mr. White. Under the circumstances I did not consider, as the company's Secretary, that I had any authority to transfer the pledged stock until maturity of the indebtedness secured by the stock.

However, the questions presented by the mortgage and pledged stock may now be disregarded in light of the suggestion for an irrevocable proxy contained in your last letter.

While ordinarily, of course, there would be some question as to the efficacy of an "irrevocable" proxy, which would ordinarily lapse upon the death of either the principal or his proxy regardless of

its supposed irrevocable character, I have [417] prepared a proxy containing covenants which I believe will establish its irrevocable character. Where the proxy is motivated, as here, by valuable considerations passing to the principal, I take it that the customarily objectionable features of irrevocability and survival after the death of either party may be overcome so as to extend powers to the heirs and representatives of the proxy on the one hand, and bind the heirs and representatives of the principal on the other.

It was necessary for Mr. Gordon to return to Fallon shortly after our conference and before the proxy was completed, but I am mailing it to him with the request that he sign and forward the proxy to you direct by air mail.

There is absolutely no question that Mr. Gordon is both anxious and willing to extend the fullest measure of protection to Mr. White and his family, and to cooperate to the limit of his ability in either locating a purchaser of the mine as a whole or of Mr. White's interest, but in so doing Mr. Gordon is naturally mindful of his own interest and of the necessity for protecting his family. In that connection, although Mr. White wired Mr. Gordon on December 25th last that he would consider an offer for the mine or for his interest, or would consider buying Mr. Gordon's interest, I understand that as yet Mr. White has placed no figure on any of these alternatives. It would be advisable for Mr. White to do so, especially as I have reason to believe that

a retired manufacturer and client of mine, who has recently arrived from the East to establish a permanent residence in Nevada, may be interested in either an entire or partial purchase. My client returned to Reno two weeks ago after wintering in the South, but unfortunately has been indisposed since his arrival. As soon as opportunity permits I shall be glad to submit to him such figures as Mr. White cares to present.

Whether or not a sale is made of the property, or of an [418] interest in the property, I feel that the proxy prepared for Mr. Gordon's signature will meet the requirements contemplated by your letter, and avoid the troublesome eventualities which might conceivably develop if either Mr. White or Mr. Gordon should pass on. I might add that Mr. Gordon feels as you do, that so long as both he and Mr. White live, such problems as may arise can be solved by mutual agreement. For that reason he believes that a proxy to be exercised after death of either party will best conform to the thoughts expressed in your letter.

Faithfully,

WALTER ROWSON.

WR'M

cc—L. D. Gordon, Esq. [419]

Penelas Mining Company
Post Office Box 151
Fallon, Nevada

April 28, 1938

Mr. Walter Rowson
E. C. Lyon Building
Reno, Nevada.

Dear Walter:

This morning I received your letter of April 27 enclosing proxy in duplicate. The original of the proxy has been signed and sent direct to Mr. Little.

I note your comment regarding this matter but all we can do is to await some word from Mr. Little.

With kindest personal regards,

Yours very sincerely,

/s/ L. D. GORDON

LDG:ds

Enclosure [420]

April 27th, 1938.

L. D. Gordon, Esq.,
Box 151,
Fallon, Nevada.

My dear Lou:

Enclosed is the form of Proxy mentioned in my letter to Mr. Little of yesterday's date, of which a copy was mailed to you.

I hope that the form of the Proxy will be acceptable to you, and that Mr. White and his attorneys may be satisfied with it. If Mr. Little's letter

to me of April 20th, 1938, correctly expresses his client's thoughts and intentions—that is, if the real purpose is to avoid untoward eventualities which might follow the death of either yourself or Mr. White, this form of Proxy should adequately fill the bill. I might say, however, that my search of the authorities has failed to disclose any precedent for the continuance of a proxy after the death of the principal or of the attorney-in-fact to whom the proxy has been executed. Hence I am a little apprehensive that the suggested form may not stand up under the careful scrutiny of Mr. White's attorneys, and I shall be very much relieved to have their acknowledgment and approval.

Kindly execute the Proxy with the attestation of one witness and forward immediately by air mail to Mr. Little.

I trust that you and Helen arrive home safely and with our best to both of you,

I am,

Sincerely,

WALTER ROWSON

WR'M

Encs. [421]

PROXY

Know All Men by These Presents: That I, L. D. Gordon, of the Town of Fallon, Churchill County, State of Nevada, a stockholder in the Penelas Mining Company, a Nevada corporation, do hereby constitute and appoint R. H. White, of the City of

Cleveland, State of Ohio, to be my substitute and proxy, for me and in my name, place and stead, to vote all or any part of an aggregate thirty-seven thousand, five hundred (37,500) shares of the stock of said corporation owned by me and standing in my name on the books of said corporation (which said stock was heretofore pledged by me to and is now held by said R. H. White as security for certain cash advances made by him for me and in my behalf to the corporate treasury of said Penelas Mining Company), upon any and all matters and questions which may be presented and considered at any annual or special meeting or meetings of said company, or at any adjournment or adjournments thereof, occurring after my death or after the death of said R. H. White, as fully and with like effect as I might or could do if I were personally present and voting thereat.

For the reason that the power and authority of my said proxy are coupled with an interest, a valuable consideration therefor having been received by the undersigned as aforesaid, it is the intention of the undersigned that said power and authority hereunder may be exercised as to any and all meetings of stockholders of said Penelas Mining Company held after the death of either the undersigned or said R. H. White, so as to extend to and be binding upon the heirs, executors, administrators and representatives of the undersigned, and that said power and authority hereby granted shall likewise extend to and be vested in the heirs, executors, administra-

tors and representatives of said R. H. White in the event he shall predecease the undersigned.

It is the further purpose and intention of the undersigned [422] that this proxy and the power and authority hereby granted shall be irrevocable until such time as all of the aforementioned cash advances, and the interest accrued thereon, shall have been repaid in full to said R. H. White by either said Penelas Mining Company or the undersigned, whereupon all power and authority hereunder shall immediately terminate and be revoked.

In Witness Whereof, the undersigned has hereunto signed his name this 26th day of April, 1938.

.....
In the presence of:

.....
Witness. [423]

Postal Telegraph

1938 May 2 PM 3 18

F98 20 NL XU-RK Cleveland Ohio 2

Walter Rowson Esq.

319 E C Lyon Bldg Reno Nev.

Please Wire Earliest Date After This Week
When You and Mr. Gordon Can See Me in Reno
on Penelas Situation.

JOSEPH C. LITTLE [424]

Postal Telegraph

1938 May 5 AM 11 36

RXF 50 8 SER-RK Cleveland Ohio 5 207P

Walter *Roswon* Esq.

319 E C Lyon Bldg Reno Nev.

Expect to be in Reno Thursday May 12.

JOSEPH C. LITTLE. [425]

Western Union

May 3rd, 1938

Joseph G. Little

Messrs. Tolles, Hogsett & Ginn

1759 Union Trust Building,

Cleveland, Ohio.

Gordon and I Available May Twelfth. Please Advise Time Arrival.

WALTER ROWSON [426]

Western Union

May 12, 1938

Rollin H. White,

c/o Grover Higgins,

1759 Union Trust Building, (Tolles, Hogsett &
Ginn)

or

Lake Shore Boulevard,

Cleveland, Ohio.

G most cooperative and anxious to avoid litigation and to restore friendly relations (period) G

is under great strain on account of family sickness (period) He feels very strongly that your plan would ruin him and pauperize his dependents (period) Is willing now to sign proxy if he can have reasonable safeguards which he wants to discuss with you (period) G plans to fly to Cleveland arriving next Tuesday (period) Am going now to Thatcher to discuss suits more fully (period) Thatcher will prepare pleadings and be ready to file upon telegraphic instructions from Cleveland (period) Under these circumstances I recommend that I leave here tomorrow by plane at 2:45 P. M. and confer with you over the week-end or on Monday (period) Please wire me Riverside as soon as possible about my return.

JOSEPH C. LITTLE [427]

April 27, 1938

Mr. Joseph C. Little
1759 Union Trust Building
Cleveland, Ohio

My dear Little:

I have copy of a letter you wrote Mr. Walter Rowson on April 20, 1938. I did not have a chance to get in touch with Mr. Rowson until yesterday morning as I have been at the mine a good part of the time for the past two weeks, and Mr. Rowson has been absent from the state in Salt Lake City and San Francisco on legal matters.

First, I want to ask you to see my letter to Mr. White of April 13 which I believe will be of interest. Second, I want you to know that I have no desire at this time, nor have I ever had any desire, to work at cross purposes as far as Mr. White is concerned; as my feeling for him is, and always has been, one of very definite gratitude and friendship. Regardless of this, I think you can well appreciate the fact, as should Mr. White, that I can not afford professionally or in a business way to do anything that would put me in a bad light.

Unfortunately, Mr. White is a long way from the scene of operation and there are many things he can not appreciate. I can only stress to you as I have endeavored to stress to Mr. White the fact that there is a right and wrong time to present a property. In the first place, the mine itself should be in such a condition as to give a favorable impression; and second, I think the winter time is a poor time to present an isolated property to a purchaser when the fact is considered that it is eighty miles from a railroad, and the regular road to the mine can not be traveled. With regard to this, you would probably be surprised to know that in the last two weeks we have had two storms at the mine with over a foot of snow each time. I am hopeful now that the [428] weather has cleared up, but I thought it had two weeks ago.

I want you to know that I have been doing everything possible to put the mine in shape for exami-

nation, and in the meantime have tried to increase the mill tonnage and do everything possible to make more progress.

I am not for a moment criticising Mr. White's desire to dispose of the property or his interest, and, frankly, the results have not been what I anticipated when the thing was started; but it must also be remembered that the mill has been in operation for only two years and considerable progress has been made.

Regardless of this, however, I am in a position where I want to do something definite and I realize the futility of proceeding as we are in view of Mr. White's position. The last thing having to do with a disposal of the mine was a telegram from Mr. White from Florida on December 25 last. In that he stated that if I wished to make him a firm offer for his holdings, he would consider it; that if I wished to make him an offer of my holdings, he would consider it; but that at the moment he wished to be in a trading position.

As Mr. White knows, I am in no position to make him a firm offer for his holdings as he knows I have not the money to back this up; to do this, I would have to sell his interest to some third party. To do this it would be necessary for me to know what he wanted for his interest, because anyone making a commitment of that kind would want a thorough examination made of the property and this would entail considerable expense. In other words, before

anyone started to make an examination they would want to know the purchase price.

I would therefore suggest that Mr. White, or you as his representative, advise me what you will take for his interest, and by that I mean a minimum price. At the same time, please advise me the minimum price he will consider for a sale of the [429] property; and in view of what has happened, I would also be glad to seriously entertain an offer for my interest. We can then begin to get somewhere.

Rowson has a client who has the money to take over the interest if it seems desirable. However it has been impossible to present the matter to him as he has been in the East for the past three months, has just returned, and is now not in the best of health. However, I understand his condition is improving, and as soon as I hear from Mr. White I will present the matter to the man in question. If he is not interested I have certain other parties in mind. But before anything can be done I naturally must know what I can do.

If nothing comes of this, and if Mr. White doesn't care to buy my interest, I will include in the proxy his right to vote all of my stock to confirm the sale of the property at a minimum price to be agreed upon; and naturally, in view of everything, Mr. White is in an excellent position to fix the price. This will protect Mr. White in case of the death of either of us; it will take care of the sale of the property.

As far as the immediate operations are concerned, I am entirely at a loss to know just what is meant by the statement that "he can not speak as to the immediate operation". In all of the time the mine has been in operation, Mr. White has made but one suggestion as to the operation and that is that the mill should be operated with one man on a shift. Regardless of whether or not this could be done from an operating point of view, I have explained to Mr. White that to do so would be a violation of the laws of this state, and that if I tried it I would probably have the mill shut down and a heavy fine imposed. I can say to you frankly that if Mr. White has any suggestions of any kind as to the immediate operation, he should offer them and they will be adopted unless I can show him to his own satisfaction good reasons [430] why they should not be. I am making this statement without any reservations.

The association of Mr. White and myself to date has been entirely too agreeable to let anything at this time enter into the situation that would in any way disturb our friendship. I am asking you to consult with Mr. White and have him name a minimum price for his holdings, a minimum price for the mine, and a minimum price for my holdings. I suppose you appreciate the fact that in a matter of this kind the vendor can not always write his own ticket, but if he will proceed as above I can then make a start, and if his terms are not agreeable I can

transmit to him any counter offer I may be able to receive.

Kindest personal regards,

Yours very truly,

L. D. GORDON

LDG:ds

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 26. Filed July 6th, 1938. O. E. Benham, Clerk. By....., Deputy. [431]

DEBTOR'S EXHIBIT No. 27

November 11, 1937

Mr. A. K. McDaniel,
1699 Preyer Road,
Cleveland, Ohio

Dear Mr. McDaniel:

I am sending by Dr. Judd the latest information I have on the mine. You will note that they did somewhat better in October although their expenses must be pretty well up with a payroll of \$9,265.02. In figuring over this payroll, I have totalled the salaries, which comes to \$2,772.50 or a little over \$2.00 a ton in salaries. Mr. Gordon was getting \$550.00 for the position which he left and he needed more money for his family, so it was agreed that his salary would be raised to \$800.00 and that I would take a salary of \$250.00 a month which, of course, is superfluous except on a partnership basis.

I have written Mr. Gordon that I would like to

consider a sell-out and in thinking the matter over, I would like to get your idea of what the property could be sold for on a cash basis; also, if you interested parties in the same, what your commission would be.

Early tomorrow morning, I am leaving for Pinehurst and expect to be back on the 23rd. If you are still in Cleveland at that time, we will talk the matter over, otherwise, I would be glad if you would write me a letter on the subject.

Hoping you had a pleasant eastern trip and with very best regards to both you and Mrs. McDaniel, I remain

Yours very truly,

RHW-EC

[Endorsed]: No. A-30-A. U. S. Dist. Court, District of Nevada. Debtor's Exhibit No. 27. Filed July 6th, 1938. By....., Deputy. [432]

[Endorsed]: No. 8947. United States Circuit Court of Appeals for the Ninth Circuit. William King White, Elizabeth White King, Rollin Henry White, Jr., R. H. White and Katharine King White, Appellants, vs. Penelas Mining Company, a Corporation, Debtor, Appellee. Transcript of Record upon Appeal from the District Court of the United States for the District of Nevada.

Filed December 23, 1938.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

In Bankruptcy No. 8947

In the Matter of

PENELAS MINING COMPANY,
a corporation,

Debtor.

WILLIAM KING WHITE,
ELIZABETH WHITE KING,
ROLLIN HENRY WHITE, JR.,
R. II. WHITE, and
KATHERINE KING WHITE,

Appellants,

vs.

PENELAS MINING COMPANY, debtor,

Appellee.

STATEMENT OF POINTS ON WHICH APPELLANTS INTEND TO RELY ON APPEAL AND DESIGNATION OF THE PARTS OF THE RECORD NECESSARY FOR THE CONSIDERATION THEREOF

In compliance with Rule 19 of the above entitled Court, Appellants here state that the points on which they intend to rely on the appeal in the above entitled matter are as follows:

1. The District Court erred in refusing to dismiss the debtor's Petition for the reason that the filing of such Petition was never authorized by any

valid meeting of the Board of Directors of the debtor corporation.

2. The District Court erred in denying the prayer of the Petition in Intervention to Dismiss the Debtor's Petition for the reason that the Debtor's Petition was not filed in good [433] faith, in that

(a) No basis existed for expecting a reorganization and there existed no probability of a reorganization under Section 77B of the Bankruptcy Act;

(b) The Debtor's Petition was not filed with the actual purpose of effecting a reorganization but for the purpose of hindering and delaying the Petitioners, R. H. White and Katherine King White, the sole creditors of the debtor corporation;

(c) No possible, feasible or practical plan of reorganization could be proposed and any plan that might be proposed would necessarily be speculative and impracticable;

(d) The Debtor's Petition did not show honesty of purpose, motive and intent.

3. The rulings of the District Court deprive the Petitioners of substantial rights in that they deprive Petitioners, R. H. White and Katherine King White, the only creditors of the debtor corporation, from collecting their indebtedness and took from all the Petitioners, as stockholders of the debtor corporation, the right to control the assets and policies of such corporation.

That for the consideration of the points hereinbefore designated, it is, in the judgment of Appellants, necessary that the entire record be printed, together with the papers on the Petition for Allowance of Appeal.

Dated this 4th day of February, A. D. 1939.

GEO. B. THATCHER

WM. WOODBURN

WM. J. FORMAN

Attorneys for Appellants. [434]

Service, by copy, of the foregoing Statement and Designation, is hereby admitted this 4th day of February, A. D. 1939.

WALTER ROWSON

Attorney for Appellee.

[Endorsed]: Filed Feb. 6, 1939. Paul P. O'Brien,
Clerk. [435]